

THE
RIGHTS
OF THE
CROWN
OF
England,

As it is established by Law.

Written in the time of the Late King,
By *Edward Bagshaw* Esquire,
an Apprentice of the Common-Law.

*Ad Conservationem Jurium Corona nostra, eò nos decet
studiosius operam adhibere, quò ad hoc astringimur Vin-
culo Juramenti, Regist. fol. 61. b.*

*Antiqua Maneria Corona annexa; Regi non licebit alie-
nare: sed omnis Rex Corona sua alienata revocare te-
netur, Fleta lib. 1. cap. 8.*

L O N D O N,
Printed by *A. M.* for *Simen Miller* at the Starre in
St Pauls Church-yard, 1 6 6 0.

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TO THE
K I N G S
M O S T
Excellent Majesty.

Most great and most gracious Sovereign,



*Uring my long
Imprisonment in
the Kings Bench
and other places, for my
adherence to the Cause of
my late Sovereign (your most
pious Father, and Gods
most glorious Martyr) ac-*

A 3 counted

The Epistle

counted at that time High
Treason, and upon that score
I was committed Prisoner to
the Kings Bench, June
the 29th 1644.

I had then leasure to
bethink my self what that
Treason was ; which I could
not find written in Books
of Law, but on Banners in
of Warre ; not amongst
men of the Gown, but
men of the Sword : a
Sword sharpened by them at
that time for the cutting
down of Monarchy and
Hierarchy.

Dedicatory.

Hierarchy, and thereby to engross to themselves the rich Crop of the Kings and Bishops Lands, which they had no possibility to bring about, but by making the one Tyrannicall, the other Antichristian.

Whereupon I adventured in this my restraint, to run the hazard of writing three Books: The first defending the Revenues of the Church in Tythes and Glebe. The second maintaining the Doctrine, Li-

A 4. turgy,

The Epistle

turgy, and Discipline of
the Church of England,
as they were establisbed by
Law. The last asserting
the Rights of the Crown of
England.

The two former were
long since Printed; this last
I made ready for the Press,
and left it in the hands of
Doctor Ouldsworth for
that purpose, Dedicating
it to your Majesties
most Royall Father:
but that sudden and barba-
rous blow which fell upon
him,

Dedicatory.

him, and in him upon the
whole Nation, to the asto-
nishment of men and An-
gels, confounded the Press,
my Book, and me ; a
fact so transcendently hor-
rid and monstrous, that it
filled me as much with a-
mazement that it could be
done ; as with sorrow that
it was done.

This Book brought to the
birth, and thus dispoyled
of its Royall Patron, wait-
ed long for the support of
Sovereign Power, and

The Epistle

now humbly supplicates your
Princely Patronage, for
strength to bring forth
which in justice your Ma-
jesty cannot well deny, you
being as well an inheritor
of your Fathers Vertues, as
of his Crown : nay more,
a happy restorer of it when
it was fallen, by your ac-
cession to it the 29th of
May last (being your
birth-day) when you were
received with such Gallan-
try of the Nobility and
Gentry, and with such ac-
clamations

Dedicatory.

clamations and shouting for
joy by all the people, that
had who have lived to see the
glory of your Royall Fa-
ther and Grandfathers
Reign, never saw the like
as to that triumphant Entry,
which (I fear) I should
be less, should I attempt to
describe.

I am only able to liken
it to the Inauguration of
King Solomon; there
were then such blowing of
Trumpets, such piping with
Flutes, such huge shouts of
all

The Epistle

all the people, with God
save King Solomon, that
the earth rent with the
sound of them; and there
were such rejoycings in the
City of Gihon, where he
was annointed King, that
the City rang for joy: so
did the City of London,
when you our Solomon
entred it on that day.

For my own part, such
was my joy, that I thought
it satisfaction and comfort
enough, for the sufferings I
had undergone for above
sixteen

Dedicatory.

sixteen yeares, in Body,
Estate, and Profession; in
that God hath heard my
constant Prayers for the re-
stitution of your Majesty to
your Crown; the Church of
England to her Religion;
the Law of England to
its ancient Glory and Splen-
dour; and the people of
England to their Mag-
na Charta-Liberties.

So that according to
our Fathers prediction, I
have seen you Charles le
Bon, and Charles le
Grand.

ΕΙΧΩΝ ΒΑΣΙΛ
ΣΕΚ. 27.

The Epistle

Grand. *And I doubt not,
but Almighty God who hath
done such wonderfull things
for you; will so continue you
to the end.*

*I here conclude, humbly
begging leave to pray for my
Lord the King, in the lan-
guage of a King (your bles-
sed Father now with God) I
pray God bless you, and
establisb your King-
domes in Righteous-
ness; your Soul in
true Religion; and
your Honour in the
love*

Dedicatory.

love of God and
your People. *And*
this shall ever be the
Prayer of

Your most loyall

and humbly devoted

. Subject

Edward Bagshaw.

ERRATA.

Page 7. line 18. for *lyc.* read *and.* p.8.l.16. for
Recorders r. *Records.* p.10.l.14. for *quellet* r. *avel-*
let. p.22.l.4.5. for *Queen Maries Injunctions* read
Queens Majesties Injunctions. p.28.l.4. for *that King*
r. *this King.* p.43.l.3. for *sortions* *Al* r. *sortions* *Al*
p.45. l.7. read *by some of the common people.* p.47.
l.21. read *doth* the word *King* intimate. p.48. l.19.
dele *so.*



THE
RIGHTS
OF THE
Crown of ENGLAND

as it is Established by Law.



O perswade a People
arm'd with a violent
Sword, to cut out
to themselves their
own Government;
to embrace Monar-
chy (lying under ma-
ny disloyall reproaches, which it hath
received from *Pen* and *Pulpit*), as the best
form of Government, to make them
happy; may seem rather the work of
an Angel, than of a man. But yet it will
be no hard matter to perswade *English*
men

The Rights of the Crown.

men to *embrace* Monarchy, under the name and notion of the Crown of *England*, when it shall be made apparent to them, that in the peace thereof consisteth their peace, and by the splendor and majesty of the Crown, they receive *Ease and Justice*, the two darling delights of the People.

If men did but consider the glory and beauty of the Crown of *England*, as it is in it self, and as it stands in relation to the people, in those two lovely properties of *Justice* and *Mercy*, it would draw all hearts to love it, all hands to defend it, all pens to write for it, and all tongues to plead for it. For what is it else, but that *Supream Sovereigne power*, given by God the founder of it, to the King, and so acknowledged by the people; annexed by Law to the natural body of the King; and unto it united and incorporated, for the Government of all his Subjects in peace and safety, according to the Laws of the Land? This is briefly the description of it, which I will now fortifie with some Reasons and Authorities.

Description.

And

And for a more succinct proving of all the parts of this description, I shall make good these six conclusions according to Law.

1. *That the Sovereigne Power belonging to the Crown of England, is, according to the Law of the Land, given to the King by God, not by the People.*

2. *That it is so assented to by the People of England; and this their assent openly declared by divers Acts of Parliament.*

3. *That this Sovereigne Power, is by Law inseparably*

and undividedly united to the naturall Body of the King and maketh in him but one Royal Person.

4. That this Sovereign Power is over all the Subjects of England, as well in a Collective Body, or Representative, as over every singular Subject.

5. That this Power is given to the King, as well for the preservation of Himself, as for the Government of all his People in peace and safety.

6. That

The Rights of the Crown.

6. That this Govern-

ment is to be according to
the Laws of the Land, not
by an Arbitrary Illegall
Power.

For the more sincere handling of all
these, I shall endeavour to avoid these
two Rocks:

First, Flattery of the King, a vice
which King *James* calls, the *pest* of all
princes, and *wrack* of Republicks.

Basi. Doron.
lib. 2.

Secondly, Injury of the People, (the
ringleader of all Sedition and
rebellion :) and truly to state the
prerogative of the King, as it relates
to the liberty of the people, in joyning
them together in marriage (as the Law
hath joyned them) with an indissoluble
bond.

Concerning the first Conclusion;

1. *Conclus.*

Though the Law of Reason be the
first Ground of the Law of *England*,

and from thence I might insist upon

* *Dr & Stu.*
lib. 1. cap 5.

Plato lib. 3^o de
Leg. *Aristo.*
 1^o lib. *Pol.*
 cap. 30.

that Argument mentioned by those two Patriarks of Philosophy and Policy, *Plato* and *Aristotle* (the Master and the Scholler) That the chiefeſt person in every household is in nature of a King; and when numbers of Families joyned themselves in civil societies, Kings were the first kind of Governours; and from thence inforce this Conclusion:

That as the Fathers of Families have (by the consent of all Opposites to Monarchy at this day) their Government immediately from God, so have the Fathers of their Countries. But because nothing hath been more tortured upon the rack than the Law of Reason, I will only hold my self for the proof of this point, to the positive Law of this Kingdome, from the first Christian King of it, to this very day.

I will begin with King *Lucius*, who after he had received the Christian faith almost fifteen hundred years agoe, by the meanes of *Eleutherius* then Bishop of *Rome*, (the most pious Father of the Church then living) he writes to that Bishop to send to him the *ROMAN*

Law

hose Laws (then famous over the world)
 whereby he might the better Govern
 the People of *England*. The good
 Bishop writes to him an Epistle back a-
 gain, *Anno. Dom. 169* (as I find it
 printed amongst the Laws of the *Saxon*
 Kings, put forth by Mr *Lambert*) and
 styles him in that Epistle, *Vicarius Dei*
in Regno suo; Gods Vicegerent in his
 own Kingdome: and adviseth him to
 reject the Laws of *Cesar*, and to choose
 a Law *ex utraque pagina*, from the Old
 and New Testament, and by that to
 Govern his People. Now the Laws
 of *England* are more agreeable to the
 Laws of God, than the Laws of any
 Commonwealth, *Grecian, Roman*, or o-
 ther, &c. though without much diffi-
 culty it might be proved; yet being
 not to the Point I have in hand, I will
 passe it by, and only prove this; That
 according to that stile of *Eleutherius*,
 The Kings of *England* have by the Laws
 thereof, and by the constitution of this
 Kingdome from that day to this, been
 accounted Gods immediate Lievete-
 nants, and to have the Supream So-
 veraigne Power from God in their

Lamb. inter.
L. g. Edw.

The Rights of the Crown.

Kingdomes, and not from the People.

The Laws of *England* from the daies of this *Lucius*, and the succeeding Kings, till the dayes of *Edward* the Confessor, were cut in pieces by the sharp Sword of Civil Warre, which continued here in *England* for divers hundred of years, (that of the *Danes* alone continuing two hundred and thirty,) and divided into the Laws of the *Mercians*, called *Marchen-leg*, into the Laws of the *Danes*, called *Dane-leg*, and into the Laws of the *West-Saxons*, called *Westsaxon-leg*. This good King *Edward*, (for so the Recordors of that time call him) out of the broken pieces of these Laws, chose twelve of the most learned men of the Law within the Realme, to compile one entire compleate Body of the Law, and Customes of the Kingdome; charging them upon an Oath, that they should performe it justly and truely, not turning to the right hand or to the left; *Nihil prætermittentes, nihil addentes, nihil mutant*, as the words of that Law are: which they did accordingly,

Leg. Edw. c. 1.

The Rights of the Crown.

9

y; and that King Enacted it to be used commonly throughout the whole Kingdome, from whence it had the Appellation of the Common Law; and not upon that ground given by a Member of the Commons-house, in the beginning of this Parliament; That Common Law was nothing, but Common Reason; and therefore he saw no cause why a Gentleman in a short Cloake, might not declare what was the Law of the Realme, as well as a Gentleman of the long Robe.

Hen. Martin.

The words of my Author are these, *Ex immensa legum congerie, quas Britanni, Romani, Angli, Daci condiderunt, optima quaque selegit, ac in unam coegit, quam vocari voluit Communem Legem.* These Laws and Customes are set down in severall Chapters vulgarly called, *St. Edwards Laws*, which are in substance the same with our *Magna Charta*, and which the Kings of this Realme heretofore at their Coronation sware chiefly to observe, in these words; *Præsertim Leges, consuetudines, & libertates à glorioso Rege Edwardo, clero populoque concessas*, as it is at large

*Vet. N. bre. fol. 164.
Juramentum Regis.
Leg. Edw. c. 17.*

The Rights of the Crown.

large expressed in the Oath of the King at his Coronation in the *M. Charta*, Printed *Anno. Dom. 1656.* in the 17. Chapter of that Law, under the Title, *de Officio Regis.* The King of England is stiled, as in the dayes of *Lucius, Vicarius summi Regis*, the Lievtenant of the highest King. The words of the Law run thus; *Rex autem quia Vicarius summi Regis est, ad hoc est constitutus, ut regnum terrenum & populum Domini & super omnia sanctam Ecclesiam ejus regat, & ab injurijs defendat & maleficos ab ea quellet & destruat & penitus disperdat.* These Laws are much refined by King *H. 1.* the Conquerours Son surnamed *Beauclerke*; but much more by *H. 2.* his grandchild, who wrote a book intituled, *pro Republica, Leges:* of which there remains not any fragment at this day: only the book of *Glanvile* Lord Chief Justice of England, and a Book called *Regia Majestas*, both written in King *H. 2.* dayes, of the Customes of England, do both of them make the Sovereigne Power of the King of England to be immediately from God.

King

King *H. 2.* compiled also an other Book, called *Statuta Regalia*, which to the punishment of this Kingdome was unhappily lost. For by want of setting down the particular Rights of the Crowne, chiefly in the Laws of the Forrest, most grievous to the Subject, and over liberall to the Crown, by reason of those great afforestations made by himself and his two Sonnes, *Rich. 1.* and King *Fohn*, grew those long bloudy and rebellious Warres (for so do Historians call them) of the Barons, lasting about sixty years in the dayes of King *Fohn* and *H. 3.* for the setting and confirming the great Charter of Liberties, and the Charter of the Forrest, agreed unto by King *Fohn*, in the 17. year of his Raign, and Enacted by Parliament in the 9. year of *H. 3.* while he was in his minority; and solemnly afterward confirmed in Parliament, when he was of full age. And yet notwithstanding these Civil Warres, *Bracton* a learned Writer of the Law in those troublesome dayes of *H. 3.* and a Judge of the Realme, and one that professeth of himself, that he did with
exceeding

Ch. de For.
cap. 1. & 3.

Stat. de Marle.
cap. 5.

exceeding labour and paines search out diligently *antiqua Instorum iudicia*, (for so he stileth the Lawes of England, the ancient judgements of the just) doth stile H. 3. in the time of the Warres against him by his Barons, according to the stile given before to Edw. the Confessor, *Vicarius Dei*; His words are these, *Rex autem cum sit Dei Vicarius in terra, separare debet ius ab injuria, aequum ab iniquo, ut omnes sibi subjecti honeste vivant & nullus alium laedat, Potentia omnibus sibi subjectis debet præcellere, &c.* Which words are in themselves a notable Confutation of those two seditious distinctions, lately sprung up against the Crown of England, by some Divines and worse Lawyers; That the King is the Supream Person, but not the Supream Power. That he is, *singularis major*, but *universis minor*: whenas the words of *Bracton* are full, That he hath a Sovereigne Power over all his Subjects universally; and if so, then over them all, as they are united in one Body, as over every singular person. But these two disloyall distinctions I shall

shall have occasion more particularly to refute, when I come to prove my fourth Conclusion; and then I shall make them as irrational as they are illegall.

Britton, another ancient Writer of the Laws of *England*, saith thus of the King; That he is ordained of God, that the Peace be kept, and therefore he is called by latter Authorities, Gods Lievetenant, the Fountain of Justice and of common Right, the most excellent Person in the Realme, and to have the most excellent things that are in the Earth and in the Sea.

By reason of this Ordination from God, he is said in Law to have divers divine resemblances, as ubiquity, to be present in all his Courts, and in all places of his Kingdome; a kind of Omnipotency in the Attributes of Justice and Mercy, distributing them to all his People, whereupon he is counted in Law the Fountain of Justice and Mercy. Nay he is reported by *Plowden* to be the chief Head of the Law, fol. 242, 243, & 502. Immortality, in that he never dies, hath no infancy, no folly,

Brit. fol. 1.

Co. 11. Rep. 72.
Plow. f. 115.

F. N. br. 21.
Plow. 234.
Plow. 238.
Plow. 242, & 243. fol. 27.
H. 8. c.
1. H. 7. 4.
Plow. Dame Hales Case.
Plow. 177.
1. H. 7. 10.

folly, no corruption of blood, &c. The King saith *Plowden*, a learned and famous Author of Law, is a name of continuance, which shall alwayes endure, a Head and Governour of the Commonwealth. Many more Authorities may be cited in this nature, which for brevities sake I omit. I will only add one Authority more, and conclude with it, because it fully proves my first Conclusion. *Bracton* in his first Book, handling on purpose the Sovereign Power of the King, hath these words, *Ipse autem Rex non debet esse sub homine, sed sub Deo*, A King (saith he) ought not to be under man, but God; and he gives a notable reason for it: For if the King should be dependant upon men, those men must have an equall Power with the King, or a Superiour Power; if an equall, then the King should have no Power, for (saith he) *Par in parem potestatem non habet*, one equall hath not jurisdiction over his Companion; if a Superiour Power, then should he be no King, but a Subject, and so without Sovereignty. And therefore as a man expert in the
 Laws

*Bract. lib. I.
 cap. 3.*

The Rights of the Crown.

45

The Laws and Customes of the Realm, he
sets down the Constitution of the
Crown of England that all are subject
to him, but he to none but only to God;
*Omnia sub eo, & ipse sub nullo, nisi
tantum sub Deo.*

But it is here objected by the People : It may be true that you say, that
this is the Law of England concerning
the Sovereigne Power of Kings; but
how doth it appear that this Law was
not imposed, or enforced upon the peo-
ple? If you can prove it, say they (and
so I have heard some speak) that the
people of England have assented to this
Law, God forbid that any should be so
wicked as to oppose it, and so execra-
ble as to resist it, contrary to their own
consent, but to trust God with the Is-
sue and event of things in whose pow-
er it is alone to loose the bond of Kings,
and gird their loynes with a girdle
(as Job speaketh) and who will punish
their faults the more severely, because
none can do it but he : as a learned
and pious Preacher spake before King
James in the behalf of all the Non-
conforming Ministers then in the King-
dome,

Ob.
Ser. Dr Jo.
Burgess 19.
Junii at Hamp-
ton Court.
An. D. 1604.

dome, the very next year after the conference at *Hampton-Court*.

Answ.

To which Objection I answer, by maintaining my second Conclusion which is this,

2. *Conclus.*

That this Law concerning the Sovereignty of Kings, is thus assented to by the People of *England*, and their assent openly expressed and declared by divers Acts of Parliament.

For the proof whereof I shall make good these two things.

1. That the People of *England* have assented to this Law by a tacite and implied assent.

2. By an open and manifest assent in sundry Acts of Parliament.

As concerning the first, it is to be known that the People of the Realme are Governed by three kinds of Law.

1. Common Law.
2. Customes.
3. Statute Law, or Acts of Parliament.

Common Law, which standeth upon divers ancient Maximes, and Principles

ple

ples of Law admitted and consented to by the people.

Customes, which are either generally allowed throughout the Kingdom, as Gavelkind, Borough-English, Copy-hold, &c. or by prescription in certain Counties, and Towns, which are likewise incorporated into the Body of the Common Law upon this Maxim, *Consuetudo ex rationabili causa facit Jus*. Now these two Laws do much exceed that which we call *Statute Law*, as being more constant and fixed, lesse mutable, and more incorrupt; as might abundantly be proved, were it incident to the point in Question. It is by this Common Law, before any Statute was made, that the Crown of *England* is not dependent on any other than God alone (this kind of Independancy the Law doth allow, but not some other:) I say, by the Common Law, which hath this Priviledge above all humane Laws, (the Laws of the *Grecians* and *Romanes* not excepted) That no man could ever stand up, and say, that he was the first

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Lawgiver to this Nation, (like *Lycurgus* and *Solon* amongst the *Greeks*, *Papirius* and *Sempronius* amongst the *Romans* :) For neither did the King make his own Prerogative, nor the Judges the Rules and Grounds of Law; nor did the people prescribe unto themselves their own Rights and Liberties; but what Liberties and Customes had been by long tract of time assented unto, approved and enjoyed by Prince and People, not disagreeing to the Laws of God, that ever was, and is still, the Common Law: Amongst which Liberties and Customes, this of the Sovereignty of Kings from God over the people, is by *Glanvile*, *Bracton*, and the *Mirroure of Justices*, (a Book treating of the Customes of *England* before the Conquest) made to be one.

2. I will now come to the second thing, and prove this Sovereign Power of the Crown immediately from God, to be expressly and openly assented to by the people in sundry Acts of Parliament.

I will

I will first begin with the Act of *16. Rich. 2. c. 5.* because it took its rise from the humble desires of the Commons of *England*, as appears by the Preamble of that Statute, wherein they all make an acknowledgment in these very words, *That the Crown of England hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to God in all things touch- in the Regality of the said Crown, and to no other.* And so was it accordingly enacted by the Statute of *25. Hen. 8.* All the Commons of *Eng- land* (at whose humble suite that Law was made) do there declare it for a Maxim and Ground of Law, *That the Realm of England recognizeth no Superiour under God but only the King.* Which authority also the whole Clergy of *England* recognized in their Synods and Convocations, as appears by that Statute.

But in the Parliament of *28. Hen.* *28. Hen. 8. c. 19.* there is a more full expression, where it is declared by the whole Parliament, *That the Kings Majesty is*

The Rights of the Crown.

the only Supream Head of the Realm of England, and that this Right, Honour and Preheminance is due unto him by the Law of God. And in this manner did the Crown of *England* sit upon the Head of Kings *Hen. 8.* and King *Eam.* his Sonne, till Queen *Mary*, loving the Popes Crown better than her own, repealed some of this power, and placed it in the Pope, which Queen *Elizabeth* in the first year of her Reign took away, and restored it in the same plight as it was in the daies of her Father King *Hen. 8.* only changing but a word, *Supream Governour* for *Supream Head*; the same in substance, though a fitter expression in regard of the Honour she bare to her Saviour, to whom she thought the tytle of *Supream Head* in respect of the Church, more properly to belong; Whereupon she altered the two Oathes that were made in Parliament *An. 26,* and *28.* of the Reign of her Father, to the Oath that now is taken throughout the Kingdom, and which every Parliament is to take, by the Statute of

1. & 2. P. &
M. c. 3.

1. Eliz. c. 1.

26. Hen. 8. c. 1.

28. Hen. 8. 10.

5 Eliz.

5 *Eliz.* ere he can sit in the House of Commons, or have a vote there. As namely, *That our Sovereign Lord King Charles, is the only Supream Governour of this his Realm, and of all other his Highness Dominions and Countreies, as well in all Spiritual and Ecclesiastical things or causes as Temporal, &c.* Which general words touching the Kings Supreamacy, are now to be expounded by those Statutes of *Hen. 8.* which I mentioned before, and do contain within them these three Properties;

5. *Eliz. c. 1.*

1. *Eliz. c. 1.*

1. That the Kings Supream Power is immediately from God.

2. That the Realm of *England* hath no Superiour under God (whether they be any or many persons, for the word Superiour includeth both) but only the King.

3. That this Honour and Preheminence of the King, is due unto him by the Law of God.

And that this is no exposition of mine, but the true genuine exposition of Law, It is provided by the Statute of 5 *Eliz.* that the Oath of

5. *Eliz. c. 1.*

The Rights of the Crown.

Supreamacy made in the first year of Queen Eliz. shall be taken and expounded in such form as is set forth in an Admonition annexed to the Queen Maries Injunctions published in the first year of her Majesties Reign: That is to say, to confesse and acknowledge in her Majesty, her Heires and Successours, none other Authority than was challenged and lately used by the Noble King Hen. 8. and King Edw. 6. And that Authority, together with all Dignities, Regalities, and Preheminences belonging to the Crown of England, are by the Statute of Recognition of 1 Eliz. c. 3. declared to be as rightfully and entirely Vested in her, as they were in the late King Hen. 8. and King Edw. 6. as by that Statute may at large appear: Some of which Regalities were, that the Crown is dependent on God alone, and subject to no Superiour under him; And this to be due to him by the Law of God.

I might add more Statutes to prove this point: I will only conclude with one Statute more, enacted within my

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own remembrance, and the best in that kind that ever was made in my daies, and the most emphatically penned. It is the Statute of Recognition made in the first year of King *James* 1. Jac. cap. 1. by the whole Parliament, which I will write more largely, because there are many memorable things in it.

First, They acknowledge the blessing of God upon this Kingdom, in the Unions of the Houses of *Yorke* and *Lancaster*, especially of the two Kingdomes *England* and *Scotland*, under King *James*, and thereby free from bloody civil warres.

Next, They testifie their unspeakable joy for his Majesties most happy Inauguration and Coronation.

Then they agnize upon the knees of their hearts (it is their own expression) their most constant faith, obedience and loyalty to his Majesty, and his Royal Progeny (of which our now Sovereign Lord King *Charles*, was then an Infant about three years old.)

Afterwards, in most lowly and humble manner, they beseech his most

The Rights of the Crown.

excellent Majesty, That (as a memorial to all Posterity amongst the Records of his High Court of Parliament for ever to endure, of their loyalty, obedience, and hearty and humble affection,) it might be publickly declared and enacted in the High Court of Parliament ; That they (being bounden thereunto by the Laws of God and man) did with unspeakable joy, recognize and acknowledge, that immediately upon the decease of Queen *Elizabeth*, the Imperial Crown of the Realm of *England*, and the Rights belonging to the same, (of which this point of the Sovereignty of the Crown from God was a principal one,) did by inherent Birth-right and lawfull succession, descend and come to his most excellent Majesty, as next and sole Heir of the Blood-Royal of this Realm. And to this Recognition *we do* (say they) *must humbly and faithfully submit and oblige our selves and Posterities for ever, untill the last drop of our blood be spent.* And *we do beseech your Majesty to accept the same, as the first*
fruits

ruits in this High Court of Parlia-
ment, of our Loyalty and faith to your
Majesty, and to your Royall Progeny and
Posterity for ever. And in the con-
clusion of the Act, they have these
words; Which if your Majesty shall
be pleased (as an argument of your
gracious acceptation) to adorne with
our Majesties Royall assent (without
which it can neither be compleat nor
perfect; nor remain to all Posterity,
according to our most humble desires,
as a memoriall of your Princely and
tender affection towards us) we shall
(of adde this also to the rest of your Ma-
jesties unspeakable and unestimable be-
nefits.

In which Statute these things are
observable:

1. That this Act of Parliament doth
not give any manner of Title to the
King or his Posterity, to the Crown
of England, but this Right and Title
to the Crown, is expressly said to be
by the Laws of God and man, by in-
herent birthright, and lawfull sug-
cession: And therefore they humbly
desire, this their Recognition may be
accepted

accepted of him, as a testimony of their constant faith and Loyalty to him and his Posterity for ever.

2. They do not subject the Crown of *England* to any forfeiture to the people, or to any conditionall Limitation in Governement, by way of preservation of Religion, Laws, Liberties, &c. but leave it pure and free according to the Laws I cited before without any condition, which the wisdom of the Law doth not admit of, as I shall more fully shew in the proof of my fourth Conclusion.

3. As they put no conditions upon the Crown, so they put no conditions upon their own Obedience and Loyalty, but freely and absolutely oblig themselves and their posterities for ever, to this their Recognition to King *James*, and King *Charles* his Sonne, and to their Posterity, to the spending of the last drop of their bloods.

4. Though the two Houses of Lords and Commons, with one unanimous consent (*nullo contradicente*) agreed upon this Act of Parliament, and

and though it was for the publick peace
and tranquillity of King and People ;
yet they acknowledged that it was
not compleate or perfect, or could
remain as a Law to Posterity ; unless
the King did give his Royall assent to
it. The new light and new Law of
making Laws in Parliament, binding
to the people, without the Royall As-
sent, were not known to this Parlia-
ment, though as wise and as learned
men were of it, as ever were either
before or since.

5. That though it was an Act of
publick concernement, yet they do
not desire the King should pass it out
of duty, which he could neither will
nor choose (as the late Language hath
been) but that he would pass it as an
Act of his grace and tender affection to
them ; And what is of grace is not of
duty and right,

They lastly desire, it may remaine
amongst the Records of Parliament, as
a memoriall to all posterity for ever
to endure, of the Loyalty and Obedi-
ence of them and their Posterity, to
that King and his Progeny for ever ;
And

And how this Recognition, according to this Obligation, hath been observed by them and their Children; that King and his Posterity, I ha much rather weep, than speak in. The Lord of Heaven adde it not that measure of iniquity in this Kingdome, pressed down and running over with blood.

And as this is the Law of the Kingdome of *England*, concerning this Sovereigne Power in the Crown; So is the Divinity of the Kingdome, as may appeare by the Doctrine of the Church of *England*, in the 37. Article of Religion, in these words; *The Queens Majesty hath the chief Power in this Realme of England, and other her Dominions, unto whom the chief Governement of all Estates of this Realme, whether they be Ecclesiasticall or Civill, in all Causes doth appertain.* By which the King of *England* is made to have the chief Power, against that seditious and new found distinction infused into the heads of the People, by some as ignorant of Religion as of Law: That the King

England is the Supream Person
or Governour, but not the Supream
Power.

I will shut up all I have more to say
upon this Point, with the only Au-
thority of King *James* in his most
learned Defence for the Right of
Kings, against Cardinall *Peron*; where-
in he unanswerably handles this Point
against *Bellarmino*, *Mariana*, and o-
ther Jesuites; and against some Pro-
testants (whetting their Swords a-
gainst Kings at the forge of those
Philistims;) Of which exquisite Piece
I may say with *Solomon* upon another
Subject, *What can the man do, that*
cometh after the King.

King *James*
Remonstrance
against Card.
Peron.

Eccles. 2. 12.

My third Conclusion is this; *That* *Conclus. 3.*
this Kingly Power, is by Law insepa-
rably and individedly united to the na-
turall body of the King, and make in
him but one entire Royall Person.

The Person of the King is by Law
made up of two bodies, A naturall
body, subject to Infancy, infirmity,
sickness and death, And a politick
body, perfect, powerfull, and perpe-
tual: These two bodies are insepara-
bly

Plow. Duchy
of Lancasters
Case. 2 13.

Plow. 213.

bly and individedly united together and consolidate in each other. *Corpus incorporatum* (saith the Law) *Corpore naturali*, & *Corpus naturale in Corpore incorporato*; So that you may distinguish them, but not divide them. This union is like that between the Soul and the Body; The Soul it animates, it quickens, it beautifies the body; so this politick body dignifies, or (rather to speak in Law-phrase) it magnifies the natural body of the King, by greatning it with a threefold greatness.

1. Of Perfection.
2. Of Power.
3. Of Majesty.

1. Of Perfection, By freeing the person of the King from infancy, folly, infirmity, impotency, &c.

2. Of Power, By giving him command over all his Subjects, and by Ruling and Governing them, and not they him.

3. Of Majesty, By making him the Fountaine of all Honour, of all Justice, and of all Mercy within the Realme.

Thre

Three the most orient and flagrant
pillars of the Crown, and which no
Subject can challenge; for all Sub-
jects put together, are but as the
Trunk of the body in man to the
Head, which without the Head, can
no more Rule and Governe the Mem-
bers of the body in Order and Honour,
than the least finger or toe; And
therefore if they should all presume to
obey without the King, to conferre
Honour, Justice, or Mercy upon any
of their fellow-Subjects, that Honour
is accounted in Law but a Tumour,
the Justice they should distribute is but
Tyranny, and the Mercy they bestow
but a specious Injury. A notable
Case in proof of this, is that of King
Hen. 7. who when he was Earle of
Richmond, was with many Lords and
Commons that took his part against
Rich. the 3^d (a King in fact, but a Ty-
rant in Title, saith a learned Histori-
an) attainted of High-treason in the
eyes of that King. At the battle
of Redmore-downe, near Bosworth in
Leicester-shire, on the 22. day of Aug.
1485. the Earle got the Victory, slew
Rich:

*Bal. Hist.
Hen. 7. fol. i.*

Rich. 3. in the field, and on the same day took the Crown upon him, and assumed the stile of a King; and in *September* following (and before his Coronation) summoned a Parliament to begin the 7. day of *November* following.

1. Hen. 7. fol.
4, 6.

On the first day of this Parliament the Judges were all met together in the Exchequer Chamber, to resolve very rare and perplexed Cases and such as had not happened since the Conquest, *viz. What should be done about the reversal of the Attainders of the King, and of divers Lords, and many Knights, Citizens and Burgesses that were to sit in Parliament that day.* This Question (the Kingdome at that time being in such exigence) had been of no difficulty, if those learned Judges had been *Conscious* of any such Law, That an Ordinance of the two Houses without the Kings actuall assent, had been as effectually as an Act of Parliament. But neither they nor their Fathers ever heard or read of such Law, and therefore they fell upon this Resolution

That

That as concerning the Lords and Commons that were attainted, they advised not to sit in Parliament, till an Act of Parliament was passed by the other Lords and Commons not attainted, and assented to by the King for the reverfall of those Attainders; and after the reverfall, then all of them to sit in the Houses; For that it was not convenient, that any should sit as Judges in those Houses that were attainted. And as concerning the King they thus Resolved (saith my Authour) *That the Crown takes away all defects and stops in blood,* Bac. Hist. H. 7. p. 13. and that from the time the King did assume the Crown, the Fountain was cleared, and all attainders and corruption of blood discharged. But yet for honours sake it was Ordered by Parliament; That all Records wherein there was any memory or mention of the Kings Attainder, should be defaced, cancelled, and taken off the File. But King Hen. 7. thought it not convenient any Act of reverfall should in any wise pass concerning him, as knowing that the Title to the Crown of England

The Rights of the Crown.

had its dependance on God and the Law, and not on the people; And therefore the grace of pardoning such Offenders as took up armes against him, being an Act of Mercy belonging to the Crown, he would not pass by Parliament, that thereby he might the better impropriate the thanks to himself: And published his Royall Proclamation to that purpose in that Parliament; likewise he did of himself and of his own grace conferre the Honours of the *Lord Brock* to *Sr. Robt Willoughby*, of *Lord Dawbeny*, to *Sr. Giles Dawbeny*, and of the *Earle of Bath*, to the *Lord Chandos*, without the assent of Parliament.

Thus have I by this one single Case, without need of adding any more, fully proved, that by the accession of the Crown to the natural body of the King, his Royall Person partakes of many, high pre-eminences of Perfection, Power and Majesty, in the Acts of Justice, Mercy and Honour (without any dependance or contribution from his people,) by calling of Parliaments, by pardoning Offenders,

Offenders, and advancements in Nobility, all of them Acts of Majesty and Sovereigne Power.

This Conjunction of the Office of the King with his naturall body, doth draw to the Person of the King, the Obedience and Ligeance of all his Subjects. Now Ligeance is nothing else in Law but the true and faithfull obedience of a Liege-man, and Subject to his Liege-Lord and Sovereigne. Not that Ligeance is only tied to the Kingly Office, without relation to the naturall Person of the King, which was the traiterous and seditious distinction of *Hugh Spencer* the yonger; for which and other his Treasons he was condemned by two severall Acts of Parliament; the one called *Exilium Hugonis de Spencer*, the other *1. Edw. 3. cap. 1.* For by this damnable Doctrine (for so the Law calls it in *Calvins Case*) if the King should not be thought by his Subjects to Govern according to his Kingly Office, the Subject is no longer tyed to obedience, but may rise up in arms against him; which cuts in sunder all the bonds

7. Rep.
Calvins Case.

*Vide Stat. in
Vet. M. Ch.
1556.*

1. 2. 3. c. 1.

of Governement, as well in Families as in the Commonwealth. And so Children may rise up against their Parents, Servants against their Masters, Wives against their Husbands, and plead for themselves the ill government of their Superiors; and so parties shall become Judges, and Subjects Sovereignes, and the world by this meanes turned into a worse estate than the first *Chaos*.

But the Law of *England*, which is a Law of order and decency, and not of confusion and deformity, is quite otherwise: for the Ligeance of the Subject is tyed principally and properly to the naturall body of the King, susteyning and supporting the Royall Majesty, and in which it doth inseparably inhere, as in its proper Subject. For Ligeance being a corporeall Service, is to be done to a visibie, corporeall, and locall Person; not to a thing invisibie, incorporeall, and not circumscribed to any place (as is the Royall Dignity.) This appears plainly by the old Oath of Allegiance, taken by all the Kings Subjects, above
the

the age of twelve years, in the dayes of King *Edw. 1.* and long before, and is at this day given in Court-Leets, which being by *Britton* set down in *Law-French*, I will truly set down in English, *You A. B. shall sweare that you shall be faithfull and Loyall to our Lord King Edward, (at this day King Charles) and his Heirs, and faith and Loyalty you shall to him bear of life and member, and of earthly Honour, and you shall not know of any hurt or dammage to be done to him, which you shall not resist to your Power; So help you God.* By which Oath it appears plainly, that Ligeance is a corporeall service, whereby the Body, Life, and Honour of the Liege Subject, is engaged to his Sovereigne, named by his proper name *King Charles*, a name given to his naturall body, capable of Baptisme onely (and to his Heirs) words proper to his naturall body, as the word (Successor) to his body polirick (and for the preservation of his Person from all hurt and dammage) things incident only to his naturall body, for his
politick

Brit. fol. 74.

The Rights of the Crown.

politick capacity; viz. his Kingly Office is incapable of beating, wounding, killing, or any other hurt, being a thing invisible, incorporeall, impassible. Hence it is that the Ligeance of an English Subject is called naturall Ligeance, and the King is called his naturall Liege Lord, insomuch as to compasse the death of the King, or to levy Warre against him, which are acts of violence against his naturall Person, are in all Inditements of High-Treason, said to be done, *contra ligeantiae suae debitum*, against the duty and bond of Allegiance. This old Oath of Allegiance, is by the Steward of *Leets* to be tendred to all men of the age of twelve years and upwards, upon a Fine to be laid on his head, that shall refuse it; and Pledges to be found for him, that he be of the good behaviour; Which Law was so strictly observed in the dayes of King *Edw. 3.* that a Master for re-
teyning a man in his service, not being sworne to the King, was presented for it in the *Leet*, and Amerced. By this excellent Law in Court-*Leets*,
this

Cal. Case.
7. Rep.

43. E. 3.
fol. 27.

3. E. 3. fol. 26.

this Realme was kept in such tranquillity and peace by King *Alfred*, (for so ancient are these Courts) that this King caused chains of Gold to be hang'd up in the high wayes, and none durst take them away. The words of my Authour are these, *Armillas aureas juberet suspendi qua viantim aviditatem irritarent, dum non essent qui eas abriperent.* Which is the more to be credited, in that it doth appear, that stealing and theeving were so rare in this Kingdome in those times, That the punishment of theft was not made capitall till above 200 years after, to wit, in the third year of the Raigne of King *Edw. 1.* Which Court Leets had they been to this day duely kept by men learned in the Laws of the Realme, as they ought to have been, (for so are the words of *Fleta*, *Provideat sibi dominus de Senescallo fidei, &c. qui in legibus & sub consuetudinibus provincia, & jura domini sui in omnibus tueri affectet, quique Ballivos Domini in suis erroribus & ambiguis sciat instruere, &c.*) And not turned over to Sollicitors, Pro-

*Guliel. lib. 1.
de Reg. Ang*

West. 1. c. 15.

*Fleta. lib. 2.
cap. 6.
Co. 9. rep. 48. b.
6. rep. Bullens
Case. fol. 77.*

ctors, Serving-men, &c. as at this day (by which meanes scarce a shadow of the ancient Jurisdiction of this Court doth remaine) this Kingdome had not so often and inwardly bled, by many bloody civil Wars, to the endangering of the Commonwealth: Like as it is to the naturall body of man, when the blood fals into the body *extra vasa*, and keeps not in the proper veynes, as Physicians observe.

This faith and Ligeance to the Royall Person of the King, so adorned with Honour and Majesty by the Common-Law, doth leave as naturall an impression of duty and Loyalty in a true born Subject to his Prince, as it doth in the heart of a Child to his Father, or of a Servant to his Master. For the Commandement of *Honour thy Father and thy Mother*, &c. doth belong unto Kings, and was ever so expounded, or else it is no where to be found in the Decalogue. Now the subjection of Children and Servants, is to Parents and Masters, whether good or bad; and so the Apostle *Peter* declares the Law,

not only (saith he) to the good and gentle, but also to the froward: for this is thank-worthy, if a man for conscience sake towards God, endure grief, suffering wrongfully. And the like subjection is to Kings, whether good or bad, in the judgement of the best Expositors that ever wrote upon the 13. Chapter to the *Romans*. This made *Hubert De Sanctâ Clara*, receive the Arrow shot against King *Hen. 2.* into his own bosome, to save the life of his Liege Lord: and this made *Tho. Howard* Earl of *Surrey*, son to *John* Duke of *Norfolk*, to fight stoutly for King *Rich. the 3.* (as horrid a Tyrant as ever trode on English mould) against King *Hen. 7.* and being asked the reason by the King, he answered, (That *Rich. 3.* was then his Crowned King, and did he see the Crown set upon the stump of a Thorne, (a fit resemblance for the King he fought for) he would fight for that stump, and so he would fight for King *Hen. 7.* now he was his King, which he valiantly performed to his Sonne King *Henry the 8.* at the

1 Pet. 2. 17.

1 Pet. 2. 18.

The Rights of the Crown.

the battle of *Flodden-field*.

And although amongst the multiplicity of new Sects that are sprung up at this day, the traitorous opinion of the said *Hugh Spencer* be revived (if Treason may be called a Sect,) *That the Allegiance of the Subject, is only tyed to the Office of the King,* not to his Person; yet there was none that ever I could hear or read of, pleaded this Plea at their arraignment for Treason. But the ordinary and common excuse hath been, of the persons Indicted, that they never intended hurt to the Kings Person, but only to remove evil Counsellors from him, or the like, which were the pleas of the two Earles of *E.* and *S.* in the latter daies of *Queen Elizabeth.* and yet adjudged to be High Treason. But the reason is not reported by *S^r Edw. Cooke*, who cited the case in the 3d part of his *Institutes*. But by a private report which I have seen, was thus delivered by *S^r John Popham* Chief Justice, That the Law construeth Treasons by Acts, and by those Acts judgeth of In-

tents,

Hill. 43. Eliz.
Co. 3. Insti.
p. 12.

ents, and the levying of Warre by them without the Kings assent, being a sortious Act at the first, (for that no Subject can levy Warre within the Realm without authority from the King;) That the levying a War to remove a Counsellor of State, is to levy Warre against the King, and so High Treason. For what did let but that the same violence which prevailed to remove the Counsellor, might have prevailed, if not only to have removed, but to have imprisoned, deposed, and destroyed the Queen, being all of them Acts of High Treason.

I will conclude all with a story of old Father *Latimer*, told by him touching the Lord *Darcy*, the Lord *Hussey*, and *S^r Robert Constable*, presently after the Rebellion in the North, *temp. H.8.* I will barely relate it in the words of that godly Bishop and renowned Martyr, and leave the application of it to others.

I will go further with you, I have travelled in the Tower my self by the Kings

*Glan lib. 1.
cap. 2. Bract.
lib. 3. fol. 1.
Co. 3. Insti.
p. 9.*

*Lat. Sermon
at Stanford.
fol. 56. Edin.
1635.*

The Rights of the Crown.

Kings Commandement, and the Constable, and their was Sr Robert Constable, the Lord Hufley, and the Lord Darcy; and the Lord Darcy was telling me of the faithfull service he had done the Kings Majesty, that dead was. If I had seen my Sovereign Lord in the field, (saith he) and seeing his Grace coming against us, I would have lighted from my horse, and taken my sword by the point, and yielded it into his Graces hands. Mary (quoth I) in the mean time, you playd not the part of a faithfull Subject, in holding with the people in commotion and disturbance. It hath been the craft of all Traitors to pretend nothing against the Kings Person; they never pretend the matter to be the King, but to others. But Subjects ought not to resist any Magistrates, nor ought to do anything contrary to the Kings Laws.

Conclus. 4. My fourth Conclusion is this, That this Sovereign Power is over all the Subjects of England, as well in a Collective Body as Representative, as it is over every particular Subject.

I have

I have before shewed the Nature and Constitution of a King of England; I shall now shew the Universality of his Power. And because in this last and worst age of the world, there is some opposition against this by the common people, who delight in change, by parting with truth for error, and receiving error for truth, from a New-Light, proceeding from the old Prince of Darkness: I will therefore in the first place Explain this Conclusion. Secondly, I will shew what the Law of the Land, and the Constitution of the Kingdom is in it. Thirdly, I will shew the Reasons of the Law in the same. Fourthly, I will Answer all Objections against it.

For the first, It is not questioned by any, but that the King hath a Sovereign Power over every particular Subject, and therefore I will say no more over that. But question is made, whether the King hath a Sovereign Power over all the people as a collective Body, congregated together in one place from each corner

Judges 20. 1.

1 Jac. c. 1.

Co. 3. Insti. fol.
3. D. & Stdd.
fol. 43. 6.

ner of the Land, from *Dan* to *Beer-shebah*, as the *Israelites* were in *Moshe*; which I say he hath; and that they all put together, are but the Politick Body, of which he is Head, and therefore hath the Sovereign Power over it, as the Head hath over the Natural Body; and not that the King hath Power over the Head: for that should the Head be the only Subject in the Kingdom, and the People Sovereigns. The like I say for the Representative Body of the People, which is nothing else in Law, but a calling by the Kings Writ, of the Nobility and People of the Land presented in Parliament; by certain Heads of the People, chosen by them upon their own free Elections: (otherwise it is no Representative Body; as appears by the Statute of 1 Jac. c. 1. and is there so explained.) Over this Representative Body, distinguished into two Houses of Lords and Commons, the King hath likewise a Sovereign Power; being called in Law *Caput Parliamenti*.

Which Conclusion thus Explained

And, I shall in the next place prove
by the Law and constitution of this
Kingdom, That the King hath a
Sovereign Power over the whole Bo-
dy of the People, as well collective,
as representative.

Two Greek words for the Name
King, do aptly expresse the Nature of

it in our Law; *Βασιλεως*, so was our King Edgar called *Anglorum Basileus*, Co. 4. rep.
in pref.

quasi βασις τῷ λαῷ, the foundation or
support of the people. And *Homer*

calls the King, *ποιμὴν λαῶν*, the Shep-
heard of the people. He is not Head

of a particular man, but of a whole
people; He is not Shepherd of a

single sheep, but of a whole Flock.
And therefore he is called in our Law,

not the Head of one man, but of the
whole Commonwealth. And so

much doth the King intimate, deri-
ved from the Dutch *Koennen*, signifi-

ing Power, because his Power extends
over all his People. *Bracton* declares

it more fully and exactly, by hand-
ling it on purpose in the 8th Chapter

of his first Book, where having shew-
ed the Reason of the Kings Super-

riority

1 H. 7. 103

riority over his Subjects, he the positively declares the Constitution of the Kingdom in these words; *Sub Rege* (saith he) *liberi homines, &c.* reckoning up there the Degrees of all the Subjects, both Lords and Commons; and then addeth these words; *Et omnis sub eo, & ipse sub nullo, tantum sub Deo.* There are (saith he) under the King Freemen of all sorts, both Lords and Commons, and all under him, and he under none, but only under God. *Omnis & Nullus*, are in School's called, *signa universalitatis*, comprehending the whole *Species* of men collectively, as well as every singular *Individuum*: and so is it there necessarily so understood. For having reckoned up before the heads of the mixt people, he concludes, *Omnis sub eo, ipse sub nullo*; which is to say, That all of these are under the King, and he not under them: And then presently raiseth an Objection, which is made at this day. If the King be over all his people, and he in no case under them, in case then that the King deny

Bras. l. i. c. 8.

deny to do this people justice, he presently makes this answer, *Locus erit supplicatoni quod facta sua corrigat & emendet; quod si non fecerit, satis sufficit ei ad penam, quod dominum expectet ultorem*: That is, you must Petition the King to amend his faults, which if he shall not do, it is a sufficient punishment to him, that God will be revenged on him. The like he speaketh in another place: *Rex omnes potentia praeclit, &c.* The King exceeds all people in Power; But yet (saith he) his heart is in the hand of God, least that power should prove Tyrannicall. So by the Oath of Supremacy, the King is said to be the only Supream Governour within his Dominions, in all Causes, &c. without exception, which particle *Only*, excludes all co-ordinate power with him by his Subjects, much more a Superiour Power. And *Exclusio firmat regulam in non exceptis*, as they say in Schooles, The 37th Article of Religion is more fully confirmed for Law, by the Statute in the 13. year of *Eliz.* which saith, *The*

E King

*Braff. lib. 2.
cap. 9.*

1 Eliz. cap. 15

Art. 37. 13.
 Eliz. cap. 12.

1 Hen. 7. 4.

24 Hen. 2. c. 12

King hath the chiefeſt Power in this Realme of England, unto whom the chief Governement of all Eſtates of this Realme doth appertain, &c. which is as much to ſay, as that he hath the chief Government of all the people of the Realme, whether in a collective or representative body, comprised under the Eſtates of Nobility, Gentry, and Commons. This made Sr. *John Markham*, Lord Chief Juſtice of *England* tell King. *Edw.* the 4. that he could not Arreſt any man for ſuſpicion of Treason or Felony, as any of his Subjects might, becauſe that if he did any of his Subjects wrong, they could have no Action againſt him, in that all originall writts are in the Kings name and he cannot ſue himſelfe. But a fuller proof for the Law, and conſtitution of the Kingdome in this point, is the Statute of 24. *Hen.* 8. cap. 2. where the Realme of *England* is acknowledged to be an *Empire*, and ſo hath been accepted in the world, governed by one Supream Head and King, having the dignity and Royall eſtate of the *Imperiall Crowne* of the

the same, unto whom a body politick, compact of all sorts of people, divided in termes by names of spirituality and temporality, been bounden over to bear next to God a naturall and humble obedience; where it is shewed.

1. that *England* is an Empire, and so was King *Edgar* stiled, *Totius Anglie imperator*: And Empire and Emperors hold their Tenure next under God; *Colimus imperatorem tanquam à Deo secundum, & solo Deo minorem*, saith *Tertullian*.

2. That the King of *England* is head, not of single people, but of a body Politick, Collective of all sorts of people; Representative, of degrees of people, the terms of spirituality and temporality.

3. That this Collective and Representative body, do owe to the King as a debt, a duty, not a courtesie, all naturall and humble obedience without putting conditions on it.

Hence it is that the two Houses of Parliament, being the Representative body of the Kingdome, do in their

Co. 4. rep in
Præfat. ex
Chart. Edgar.
Tertul. ad
Scap.

1. *Eliz. cap. 4.*1. *Jac. c. 1.*2. *Jac. c. 2.*

Bills of Parliament tendred to the King, stile themselves sometimes, your most humble, faithfull, and obedient Subjects; sometimes, your most humble and loyall Subjects; and sometimes, your most loyall, faithfull, and true-hearted Subjects. And it is impossible, most humble, faithfull, obedient, loyall, and true-hearted Subjects, should have a coercive, coactive, and punitive power, over their Liege-Lord. With this Law the prayers of the Church of *England* do agree, established by three severall Acts of Parliament, and used in the times of four Princes, King *Edw. 6.* Queen *Eliz.* King *James*, and King *Charles*; by which the Ministers of *England*, in behalf of all the people do acknowledge, that God is the King of Kings, and the only Ruler of Princes; that King *Charles* is their gracious Lord and Sovereigne; And that having Gods authority, they prayed that they may faithfully serve, honour, and humbly obey him; that God would endue him plenteously with heavenly gifts; that he would grant him in health
and

and we alth long to live, strengthen him to vanquish and overcome all his enemies, and after this life attain everlasting joy and felicity. And I am perswaded, That if these Prayers for the King, and that of the House of Commons by their Speaker (that God would so unite the hearts of King and People, that they might never be divided,) had been still used, we had not seen such miserable dayes. But the fullest of all and unto which I will add no more authorities, is the positive Doctrine of the whole Church of England, confirmed by Act of Parliament, in these words, *This is Gods Ordinance, Gods Commandement, and Gods holy will; That the whole body of every Realme, and all the parts and members of the same, shall be subject to their Head, their King.*

3. Hom. of obedience.
Artic. of Rel. 35.
Stat. 13.
Eliz. cap. 12.

And though this Law so universally consented to, and not disagreeing with Right and Justice, is a sufficient ground to cause every good man to believe and obey it,

The Rights of the Crown,
according to that of the Poet,

*Vir bonus est quis ?
Qui consulta patrum, leges qui juraque
servat.*

Yet I will in the next place give some
Reasons for it.

Reas. 1.

The first Reason is taken from the
nature of this Governement, being
Monarchy, The Governement by
which God Governs all the world,
the government by which the *Sun rules*
the day; the governement which God
instituted in Paradiſe, when he cre-
ated *Adam*, making him a Man and a
King at once, giving him the Com-
mand over all creatures, eſpecially his
own family, in which the Kingſhip
continued in him, and the Primoge-
niture of his Family for *above 2000*
years; So that Kingly Governement,
and that of Families, having their ori-
ginall together, differ not in nature
but in extent (Kingſhip being nothing
eſſe but an orderly rule over multiply-
ed families, under one governour in
chief) Now the Law of *England* be-
ing * founded on the Law of God, it
reſembles

* 2. 6. 40.

12. 8.

2. 10.

7. Hen. 8.

K. 1. rep.

D. & St. cap. 6.

resembles the Sovereigne Power over Subjects like that of families; and therefore the King of *England* is called in our Books of Law, *Patens patrie & paterfamilias totius regni*; the father of all his Subjects, and the whole Kingdome to be but the family, of which he is the Head. And therefore what the blessed Apostle observes of his *Israel*, I may observe the same of our *England*, *We have had* (saith he) *the Fathers of our flesh correcting us, and* (instead of resisting) *we gave them reverence*; But who ever saw children beating their parents, but with horreur and amazement: the like may be said of Subjects fighting, beating, and deposing their Kings; And howsoever by the judgement of God, and as a plague upon this Kingdome, such abominable Acts have been done by Parliaments, witness those tragick examples of the two second Kings of their name, *Edward* and *Richard*, coloured under a mishapen form of Law, by two traiterous and perjur'd Judges of the Realme, *Trussell* and *Thirning*, (the worst of their name, and the inde-

11 Rep. f. 20.

Heb. 12. 9.

S: W. Raul.
Praf.

Reaf. 2.

11 Rep. f 20.
Hen. 7.

lible steine of their profession) yet what became of the prime Actors in that bloody scene, and how God revenged the blood of those Kings upon the whole Kingdome, I referre my Reader to the learned Pen of the most famous Historian of our time, for a large and exact relation of so sad and bad a story.

My second Reason is taken from the regard the Law hath to the person of the Supream Governour, esteeming him the Head of the Law, and the Fountain of Justice, and calling him *Capitalis Justiciarius totius Anglia*; Now both Law and Justice, should ill provide for the King, if they should leave him to the correction and punishment of his own Subjects; For then it would be impossible for him to be safe, whether good or bad; Nay good Princes would hereby be in the worst condition. For this being true, that farre the greater part of the people are wicked, and wicked people do naturally hate good Princes, even for their goodneis, (as *David*, a King and a good King speaks of himself,

self, *Psal.* 38. 20. *They also that render evil for good are my adversaries, because I follow the thing that good is,*) it will consequently follow, that good Princes are in the worst condition, if it should be in the Power of the people to punish them. For it hath been found true in all ages, that the best of Princes have had the most rebellions against them: Infinite examples might be produced, I shall name but two or three. *David* we know was a King after Gods own heart, and yet as good as he was, he was not free from many treasons and rebellions against him; Whereas of *Manasses* a most wicked and Idolatrous King, and who Raigned much longer, we read not so much as of on treason or rebellion against him all his long Raigne of five and fifty years. My next instance shall be nearer home, Those two matchless Princes for piety and virtue, children of one Father, King *Edward*, and Queen *Elizabeth*, scarce a year in either of their Raignes passed over their heads without some treason, rebellion, or insurrection, plotted

ted or acted against them by their own Subjects. And for this cause it is that the Law hath left the King to the judgment of the highest judge. For if the Subject should judge him, it must be by some process of Law, which is altogether in the Kings name, and it is absurd to think, that the King can either sue or judge himself. And therefore in the Writ of Assize of *Darrecappraesentment*, which in the case of the Subject runnes thus; *Rex Vicecomes &c. salutem, si A. fecerit te securum, &c. tunc summon. per bonos Cummunitis, &c.* But in the Kings case, the words *si, &c. fecerit te securum,* are left out, in that the King, for the dignity of his person, cannot find pledges, for then he might be amerced or punished for want of them, which is against the nature of royall Majesty. Besides how is it possible the King should be tri'd, he having no Peers, when all Tryall in Law is *per pares*, Monarchy and Peers being as incompatible and inconsistent as order and confusion.

Fitz. nat. brev.
3 I. F.

Bracton.

Reas. 3.

My third Reason is taken from the nature

nature of the people, impatient of the yoke, and apt to quarrel with government, be it never so good, *Plutarch.*

Omni enim populo inest malignum quiddam & querulum in imperantes:

And therefore it is that the Law of England hath exalted the Thrones of Kings above the reach of the people, and submitted them to God: And it is for the benefit and safety of the people it should be so, *Imperii majestas est tutela salus* (saith the Law)

Co. Instit.
1. part f. 64.

the dignity of the Prince is the peoples security; And so it hath fallen out in all ages, that so long as the people upheld the Majesty of the King, so long they have been happy; But as soon as they forsooke it, they themselves have been crusht to pieces under the fall. So it fell out at Athens, one of the most flourishing Commonwealths in the world: The people weary of the Government of their hereditary Kings, first expelled them, & then set up *Decennimicall Governors* in their roomes; After that their *Oligarchy* of four hundred Commoners, And after them their *thirty Tyrants*, who

who brought their Commonwealth
 utter ruine; And thus it was with
 poore *England* in the dayes of King
John and King *Hen. 3.* his sonne, when
 the Lords and Commons waged war
 against these Princes, assumed the Go-
 vernement of *England* to themselves
 and deputed it into the hands of twen-
 ty four Commissioners; took King
Hen. 3. and *Edward* his sonne, and
 kept them Prisoners in *Killingworth*
 Castle for almost two years. But
 what was the issue of this glorious
 misrule, which lasted first and last al-
 most threescore years? what good
 had the people by it? I will tell you in
 the language of *Tacitus*, *Anferre tri-
 cidare, rapere pro imperio habem,
 atque ubi solitudinem fecerint, hoc pa-
 cem appellant;* to rob them, to spoile
 them, to kill them, was all the justice
 they had; And when they were stripped
 of all, and their possessions laid waste
 and desolate, that was accounted there
 Peace. And what these Lords of mis-
 rule gained by it, the Statute called
Dictum de Killingworth tells us. They
 were all glad to compound with that
 mercifull

mercifull King for their fines and ran-
some, at that very Castle where they
kept him Prisoner. Hence it came to
pass, that the poore Commoners of
England (so made, by the low and de-
jected state of the Crown, in the
dayes of King *Rich. 2.*) joyned with
the Lords by Petition in Parliament to
the King: That the Majesty and Prero-
gative of his Crown might be main-
tained and kept, And that all things
done to the contrary might be redres-
sed, knowing that mens private estates
are not safe, when the Crown is not
secure: And therefore the spirit of
truth commands us in the first place to
pray for Kings, That under them we
may lead a quiet and peaceable life
in all godlinesse and honesty; Inti-
mating, that when the Crown is di-
sturbed, no quietness, no peace, no
godliness, no honesty is to be found in
that Kingdome. I will shut up this in
the observation of *Comines*, a great
and wise States-man, That he never
knew a man in all his life, that sought
to put in fear, or hold his Prince in sub-
jection, that ever came to good end.

Rot. Par.
14. R. 2. n. 15.

1 Tim. 3. 2.

4. These amongst divers more of the Reasons of Law in this point touching the Supremacy of Kings. come now to the Objections, all of them consisting upon distinctions, which often argue a galled conscience as if conscience told them this to be true, but were willing to be cheated into error by a distinction, and then it falls out to be true, what was spoken by a judicious Divine, *That obedience accompanied with unwillingness to obey, is no better than disobedience.*

Hooker Eccl.
Pol.

Object. I.

First they object, This obedience to Kings is not absolute, but upon condition, so that they governe according to Law?

Ans.

The Law of *England* makes no such distinction, as I have said and proved before; *Et ubi lex non distinguit, nec nos distinguere debemus.* Neither could I ever read, that any Monarchy in the world was so founded. For as for that of the *Ephori* amongst the *Lacedemonians*, and the *Demarchy* amongst the *Athenians*, which are commonly objected, for the power they had

of the coercion of Kings : It is well known, that they were both of them usurpations, and contrary to the first foundation and constitution of the Government of those famous Cities, *Athens* and *Sparta*.

But they say, though the Law have *Object. 2.*
no such expresse condition, yet it is implied in this manner; Kings are ordained for the good of the People, and therefore if they rule to their hurt, the people may right themselves.

Ans.
This is an absurd consequence, that makes the foundation of all Government, for Pastors, Husbands, Fathers, Masters, are ordained for the good of their flock, their wives, their children and servants, if they discharge not their severall duties to all these, they by this reason may be no longer obeyed by them, And so by this means Inferiours shall Lord it over superiours, contrary to the order of Nature, Reason, and Law; No, but the Argument holds thus; Pastors, Husbands, Parents, Masters, &c. being ordained by God, to govern their flock, their wives, their children,
and

and servants, in godliness and honesty shall severely answer to God for breach of this trust committed to them by him if they governe amiss.

Object. 3.

But Kings are not the Ordinance of God but of men, for it's said 1 Pet. 2. 13. *Submit your self to every ordinance of man, &c. whether to the King as Supream.*

Answ.

Many learned Expositions are given of this place by very learned Divines, Dr *Hammond* and others. I shall for the present only content myself with that brief one of *Piscator* who expounds it, *Ratione subjectionis ratione causa*, That is, Kings are said to be the Ordinance of men, as they exercise their Authourity among men, not as men are Authors of the Authority, for that only belongs to God; and therefore the King is called *Rom. 13. the Minister of God*; and the words of that Text intimate so much, that this subjection should be due unto Kings, *Dei causa, for the Lords sake*, for only by him Kings Reigne *Prov. 8.* Like as it is of Ministers of the Gospel, they have imposition of hand

hands from men, and preach to men,
but their function and authority is
from God, and therefore they are
called, *Ministers of God, and of Jesus*
Christ.

4. It is objected, that the King is not
King till he be Crowned, and then
at his Coronation he promiseth by
Oath to his people three things, saith
Bracton. 1. To see the peace of the
Church and people be kept. 2. To
repell all force, and keep his peo-
ple from wrong. 3. That in all his
judgements he exercise Justice and
Mercy; Now if he performe not these
Conditions, the people are free, and
not bound to obey.

*Bracton Lib. 2.
Sanf. pl. Cor.*

It is neither so nor so, for Kings
are absolute Kings before they be
Crowned, for Coronation is not es-
sentiall to the King, but only orna-
mentall: *Edward* the 4th called his
Parliament before he was Crowned,
so did King *Hen. 6.* call divers, being
not Crowned till the 10th year of his
Raigne; and it was adjudged in the
Case of the Lord *Cobham*, *S^r Walter*
Auoley, &c. 1. *Fac:* that to conspire

Ans^r.
C. 7. Rep.
Calvins case.

Cok. 3. Just.
1. Hen. 7.

F the

the death of the King before his Coronation was High-Treason.

2. The Oath he takes at his Coronation to performe those recited promises to his people, is not Conditionall, neither doth any clause in it sound like a Condition, unless they will have it to be in the conclusion of the Oath, which then also makes against them; for the words are, *Me Deus adjuvet*, Let God deal thus and thus with me, if I performe not the Oath made to him: It is not, *Ita mi judet populus*, Let the people do so and so to me. And the Perjury of Princes is tryed at Gods Barre, not at mans.

Object. 5.

It is confessed to be true, that the King is greater than any one single person in the Kingdome, but he is not greater than all the people of the Kingdome put together, And therefore a new distinction kindled from a new-found-light of *singulis major* and *universis minor*, infused into some people, have made them swell at this day till they are ready to burst; which being strictly examined, will prove nothing

nothing else but *bullā bullata*, a blown bubble, which experience tells us, is nothing till it be blown, and quickly blown into nothing: And therefore I will give it a twofold answer.

Major and *Minor* are terms of *Answ:* quantity, as *magis* and *minus* are termes of quality. Now in things of quantity, the distinction of *singulis major*, and *universis minor*, holds true; but not in things of quality, (quantity and quality being of severall natures, and belonging to severall Predicaments,) as for example, a Schoolemaster of a Schoole is for the most part in respect of quantity of body greater than any Boy of the Schoole, and less than all put together; But that man deserves to be whipt that will affirme, that in respect of power and authority, he is not greater than all the Boyes in the Schoole put together, he having power to correct them, not they him.

So, and much more may it be said of Kings and Princes, that they are in power and dignity *universis majores*;

greater than all the people joynd together, in that the whole people make but one body Politick, of which the King is the Head, and hath as much power and superiority over that Body politick without check or controll, as the head of any man hath over the naturall body, for so is the resemblance of Law.

Secondly, I answer, the Kings Supremacy doth not as other Powers receive their efficiency from naturall and inferiour Causes, for his preferment doth not spring from the dust, but from him who stiles himself the King of Kings, and Lord of Lords, who removeth Kings, and setteth up Kings, as *Daniel* speaks. And therefore the Kings Authority being from him, it cannot possibly be subject to any inferiour Magistracy which derives it self only from the Prince; for not only all single-Persons within the Realme, but all Corporate and Representative Bodies derive their dignity and power from him, and acknowledg in their entire and universall capacities, to owe unto him all humble obedience, as it

Dan. 2. 21.

is expressed in the Statute of 24. Hen. 8. 24. Hen. 8.
c 12.

And then it necessarily follows according to that Maxime in Schooles, *Quicquid efficit tale, illud magis tale*, He that is Head gives power to his Subjects, cannot himself be subject to that power he gives.

The sixth and last Objection, and the most Giant-like, from whence all other Objections, like hands from the shoulders of *Briareus*, are derived from two new coined distinctions from new men, and of a new Mint, viz. A Subordinate Power to the King; and a Co-ordinate Power with the King; An actual power or presence of the King, and a virtuell power or presence of the King: and upon these two distinctions the Objection stands thus. When the King, Lords and Commons meet in Parliament, they meet as three Estates, The King the first, the Lords the second, and the Commons the third. These three (say they) in the passing of Bills have a Co-ordinate power. So that if the Lords and Commons do pass a Bill, and the King refuse it, yet it shall pass as a

6. Object.

Law, by virtue of two Co-ordinate powers against the third power, and so the King shall have no negative voice. And in case the King shall be absent from Parliament, whereby he cannot assent, then by reason of a virtuall power of a King, which in case of his absence is vested in the two Houses, the consent of the two Houses shall include his assent, and so shall pass as a Law by way of Ordinance : So that in both cases, the scope and drift of the Objection is to exclude the King from having any Negative voice.

Answ.

Admitting this distinction to be true (though I can shew divers Parliaments which make the King more than a third estate,) I shall notwithstanding give this answer, That this being an Objection so greatly countenanced by men of the Gown, I will not be so uncivill, as to say it is absurd, irrational, and illegall, But I will crave leave to endeavour to prove all these three.

For the first, If the King and Lords which (as they say) are two the greatest Estates in Parliament, (though in truth

truth the King be more than an Estate) should agree upon a Bill; and the House of Commons should refuse to agree to it; yet if this should be true, as is objected, then the two Co-ordinate powers (as they speak) of King and Lords assenting to the Bill, should over-rule the third, not assenting to it, and so the Bill should pass as a Law to bind the whole Kingdome, without the House of Commons. Or put the case the House of Commons should absent themselves, (Speaker and all) as it is not time out of mind that such a case hath been, yet the two other Co-ordinate Powers, in this case of absence, might by the like reason, by a kind of virtuall power, (I know not from whence) pass the Bill as a binding Law for the whole Kingdome; which how absurd these Conclusions are from the two former distinctions, I leave to all the Commons of England to judg of: *Eadem est lex, ubi par ratio*; nay the reason is much stronger in the Kings case. For if the Lords and Commons which are the lesser Powers, may exclude the

Kings negative voice, which is the
Supream Power, much more may
the King and Lords being the greatest
Powers, exclude the Commons which
is the least. And if so, then what
need is there of their presence in Par-
liaments; And if that, then what
need of Parliaments? So endless are
the absurdities that follow upon con-
clusions, that arise from brainless di-
stinctions.

Secondly, It is irrationall; for how
can it be thought reasonable, that the
King who hath the sole right of Call-
ing Parliaments at his will and plea-
sure, to give him counsell and advice
touching those weighty affairs, for
which he calls them, should not have
liberty to assent or disassent to what
both Houses advise, be it good or bad.
Otherwise it will follow, that if they
shall tender him a Bill for the taking a-
way the Rights of his Crown, which
by his Coronation Oath, he is bound
to maintain, or tender him a Bill for
his deposition or de-throning (as they
did to those two unfortunate Princes,
Edw. 2. and Rich. 2.) he must yield
his

this assent to those Bills, in that the concurrence of the two other Co-ordinate Powers (as they call them) had taken away his Negative voice. What had become of our Religion at this day, if this had been either Law or Reason in the first year of the Reign of Queen *Elizabeth*, when the Lords and Commons of that Parliament would never have abolished Popery and the Masse, had it been in their Power by Law, to have excluded that religious Queen, of her Negative voice? But the Judges of the Realm (though all of them at that time Popishly affected, and) as learned men, as any were either before, or since, knew no such Law, as by two illegal distinctions (as they are applyed) to deprive the Crowne of its most ancient Privilege.

3. But thirdly and chiefly, The two distinctions of Co-ordinate and Sub-ordinate Power, Actuell and Virtuall Presence, as they are applyed in the Objection, are against Law.

Co-ordination as well in Logick as in Law, are of things of the same rank,
of

of the same dignity, and of the same order : As for example, four Judges of the Kings Bench are said to be Co-ordinate in Power, because they are men of the same rank, of the same dignity, of the same power, and the like of the four Judges of the common-Pleas, and the Barrons of the Exchequer. And the Kings Commission under his own broad-Seal (not any other) which gives them their dignity, is alike to them all. But it is otherwise in the high Court of Parliament; the King sits there as the Supreme Power, the Lords sit beneath his Throne all uncovered before him, the Commons stand bare at the Bar, and both of them in all their public Acts, where they speak of him, acknowledge themselves his humble and dutifull Subjects. So likewise, between the Lords House, and the Commons House, there is a great difference in point of rank and order. For the Lords House is, by divers Acts of Parliament, and Book-cases, called the upper, or higher House; The Commons House is called, the neather or lower

33. Hen. 8.
cap. 21. Co. 5.
rep. 14. d
Crompt. Jurisd.
tit. Parl.

power House. And when these Houses send to one another, the Commons send Members of their own, in the message; the Lords send no Members, but only Attendants on their House. No Lord comes to the Commons House, much less stands at the doore, and waits as the Commons do. And when both Houses meet at a Conference, the Lords sit with their Hats on, the Commons stand before them with their Hats off, with many more differences of rank and order, disproving a Co-ordination between them, which for brevities sake I omit. The truth is, that in passing of Bills there is a joynt concurrent agreement of the King, and two Houses of Parliament, which may be properly called a Co-agreement, arguing a Co-assent of will, but by no means can it be called a Co-ordination, intimating a sameness in rank, dignity and power.

For the other distinction of actual and virtuell presence, or actual and virtuell power, as it is applied in the Objection, it is alike
illegall,

illegall, which will thus appeare.

Before the Statute of 33. Hen. 8. cap. 21. never any Bill passed in Parliament for a Law (the King being within the Realme) by the Lords and Commons alone, without the Kings personall assent in Parliament to the Bill, as he that gave life and being to the Law; And therefore their ancient Statutes ran in the Kings name alone, as the principall Agent and efficient in passing a Law, as the Statute of *Magna Charta*, 9. Hen. 3. though made with the assent of Lords and Commons, yet it runs in this forme; *Henricus Dei gratia, &c. Sciatis quod Nos intuitu Dei ad exaltationem Sancte Ecclesie, & emendationem Regni nostri, spontanea & bona voluntate nostra dedimus & concessimus, &c. libertates subscriptas, &c.* So the Statute of West. 1. in 3. Edw. 1. runs thus; *Ceux sont le establisment, le Roy Edw. fitz l' Roy, Hen. fait à Westminster.* The like is said of the Statute of York, 12. Edw. 3. and many more, which for brevities sake I have quoted in the Margin.

Neither

41. Hen. 3.
52. Hen. 3.
West. 2. c. 3.
18. Edw. 1.
c. 5. 1. Edw. 2.

Neither can any man alive give me one instance since Parliaments began in *England*, that while the King was within the Realme, in what condition soever he was in, that ever any Act or Ordinance of Parliament passed as a Law without his personall assent. I put the case of the Kings being within the Land. For when he was necessitated to go out of the Land, as *Edw. 1.* into the holy Land, *Hen. 5.* into *France*, they made by their Commissions a *Custos Regni*, which supplied the Kingly office, as *William Longchamp* Bishop of *Eli*, was made *Custos Regni*, to *Hen. 5.* and the reason of the Law was plaine in it, for while the King is in *England*, he ought to Act as a King, by personall assenting to Bills, one of the highest Acts of Majesty which he is to enjoy by Law.

But the Statute of 33. *Hen. 8.* cap. 21. made a little alteration of the Law in the manner of passing of Bills, which Statute was made at the humble desire of the Lords and Commons in Parliament, upon their impeachment

Stat. 33. *Hen.*
8. cap. 21.

The Rights of the Crown.

ment of Queen Katherine Howard (King Hen. 8. wife) of High-Treason where they humbly beseech the King (for feare trouble should arise to his heart, and unquietnesse to his mind, to the shortning of his dayes, it he should appear in person in the Parliament, and assent to the Bill of her Attainder,) To grant his Royall Assent to the Bill of her Attainder, by his Letters Pattents to be Signed with his own hand, and to be put under his Great Seal, and so to be notified and published in the Higher House, &c.

Higher House (so it is there called) to the Lords Spirituall and Temporall and Commons, there to be assembled; and such assent by the Letters Pattents of the King, is declared to make a perfect Act for the Attainder of that Queen; and that no scruple might be made hereof in time to come, concerning this particular, a generall provision is there made for all future Parliaments in these words following.

Be it declared by Authority of this present

present Parliament, that the Kings Royall assent by his Letters Pattents under his Great Seale, and Signed with his hand, and declared and notified in his absence to the Lords Spirituall and Temporall, (and to the Commons Assembled together) in the higher House, is, and ever was of as good strength and force, as though the Kings person had been there personally present, and had assented openly and publickly to the same.

In which Statute(which I have diligently perused) these things are very observable.

I. That before this Statute, the Kings personall and open assent to Bills in Parliament, was so requisite that they could not pass without it; which was the cause that made the Lords and Commons in those dismall Parliaments, in the dayes of those two infortunate Princes, *Edw. 2.* and *Rich. 2.* to require their personal assent to their own deposition by Act of Parliament, before they went to execute the sentence of deposition against them, which they like two weake Princes yielded

King Rich. 1.
called *Cœur de*
Lyon.

Rot. Parl. 1.
Hen. 4. n.
13, 13, 15, 58,
39, 60.

yielded unto, especially the latter, who had he had but a piece of that Lion-like heart of the first of his name, he would never have assented to an Act of the Renunciation of his own Crown; and not only so, but to swear to it upon the Gospel, never to impugn it in thought, word or deed, (so saith the Record of that Parliament) and after to subscribe to it with his own hand; and further in Confirmation of it, pulled a Gold Ring off his finger, (being his Privy-Signet) and put it on the finger of his usurping Successor, the Duke of Lancaster. All which things he so tamely yielded unto. And when Chief-Justice *Thirning* (too bad a man for so good an office) upon that renunciation pronounced the sentence of deposition against him. The poor King gave him this pittifull answer, *That he looked not after rule, but only hoped his Cosen would be a good Lord to him.*

Had this virtuall power of passing Bills by the two Houses, without the personall assent of the King, been ta-

ken

ken for currant Law in those dayes.
The Judges of those times would not
have advised *Hen. 4.* to obtain a per-
sonall assent especially of an imprison-
ed King.

2. And therefore the vanity of this
virtuall power was well discerned by
the Lords and Commons in that
Parliament of 33 *Hen. 8.* as may ap-
pear in this ; That because it was not
thought convenient the King should
personally assent in Parliament to the
Attainder of his own Queen, yet they
devised a way by that Act, whereby in
substance he should do (in effect) the ve-
ry same thing ; for by his Letters Pat-
ents he was to assent to the Bill, and
that virtuall assent was to be Signed
with his own hand, and the Commis-
sioners appointed by the Letters Pat-
ents to signifie his assent to the Bill,
were to notifie it to the Lords and
Commons Assembled in the Higher
House, not as their own, but as the
Kings assent. What needed all this
adoe and caution, if this new device of
the virtuall Power in the two Houses
would have served the turne.

G

2. The

2. The second thing observable in this Act of 33. *Hen. 8.* is this, that the manner of assent to Bills by the Kings Letters Patents, seemed by that Act to be a doubt and ambiguity to the Lords and Commons, who thought that after-ages might confirme it to; And therefore they made a generall provision by that Act, that for all time to come, the Kings Royall assent to Bills, by his Letters Patents Signed with his hand, and notified by his Commissioners to the Lords and Commons, should be of as good force and strength as if the King had personally appeared in Parliament, and openly assented: Which strongly implies, that out of those two cases, no Bill in Parliament could pass by the Kings assent. From whence then should this virtuall power and presence proceed, when neither given to the Houses by t^e King, nor created by Law, it is not easie to be imagined, unlets from some turbulent brain, like that of a Monosyllable Judge in the dayes of King *Edw. 2.* (the worst kind of Judge, when opposite to the Crown) called Judge

Irgt.

Inge, who delivered it for Law; that the Lords of the upper House without the King and Commons might make Ordinances, displace offices, &c. and had a joynt regiment with the King, in the Government of the Kingdome; &c. for which opinions notwithstanding his great skill in the Law, he obtained among the Commons no other reputation, than of a learned Traytor.

3. The third thing observable is this, That as it is a just priviledge of the Lords and Commons in Parliament, to assent or disassent to Bills in Parliament, though never so beneficiall to the Commonwealth, so it is likewise an undoubted prerogative in the King, being the Highest Estate in Parliament to have that power and priviledg. And therefore the Lords and Commons do in that Parliament humbly desire the King, that for the entire love and affection he beareth to the Commonwealth, for the conservation of his own Majesty, and for the peace and unity of all his Subjects, he would pass that Act of Parliament, which plainly sheweth, that the

The Rights of the Crown.

King had a negative voice as well as they, and might assent or dissent at his pleasure, and an undoubted right of his Crown, as might be proved by infinite examples in all times.

4. The fourth and last thing observable in that Act is this, That when an Act is passed by both Houses of Parliament, yet it is not perfect, nor can be put in execution as a Law, till after the Kings royall assent, and so is the expression of the Lords and Commons in that Act of Parliament, *That his Majesty would grant his royall assent to that Act, that so after that, it might stand as a perfect Act, and be put in due execution accordingly.* And so was the Law ever taken by those two famous Lawyers and Parliament men, the Lord Cook, and Mr Plowden, in their learned writings of the Law. But concerning this negative voice of the King, I shall have occasion to reserve it hereafter for longer discourse, concerning the Priviledges of the Estates in Parliament what belongs to the King as he is King and the Supream Estate in Parliament; What belongs to the Lords

Plow. fol. 79.
Co. Com. Lit.
fol 90.

ed in sundry Acts of Parliament, the
Higher House; and what belongs to the
Commons called in these Acts the low-
er House, a work not done by any, and
yet not much difficult to be done. But I
cannot yet performe it, till I can reco-
ver those Notes and Collections I
have made out of divers Records of
Parliaments, which are now by these
unhappy times devided from me, and
so from them.

And thus have I endeavoured to
answer the main Objections against
this Sovereigne Power of the Crown
of *England*, and cleared it from the
Disloyall aspersions of undutifull
men; And therefore shall now in
the next place handle the exercise
of this Sovereigne Power in the
two last Conclusions, and so make
an end.

The fifth Conclusion is this, That 5. *Conclus.*
this Sovereigne Power is given to the
King, as well for the preservation of
himself, as for the governement of
his People in Peace and safety, for the
performance whereof the Law of *Eng-*
land, doth furnish him with the power

Plow. Com.
fol. 268. a.

of the Sword, and annexeth to his Crown the Sovereigne Command of the *Militia*, and therefore he is by our Law called, the chief Captain of all Chivalry within his Dominions. This unquestionable Prerogative of the Crown, I could prove by many Arguments derived from the Law of God, the Law of nature and reason, the Law of Nations, and most abundantly from the Imperiall Laws, digested into a compleat Body by *Justinian*, out of a vast confused heap of former Laws. From these Laws doth the common Law of *England* borrow many grounds of Law, in so much that in divers things a man cannot understand the depth of the Laws of *England* without some insight and knowledge in the Civil Law; and it is well known, that our ancient Lawyers, such as *Glanvill*, *Bracton*, *Britton*, &c. were well studied in the Civil Law. But I intend a compendious discourse, and not a volume, and therefore shall prove this point sufficiently by the common Law without the help of any Ground or Maxime
taken

taken from the former Laws, but only of such as are incorporate into the common Law of *England*.

In the very beginning and in the very first words of *Justinians* Institutes, (an exact Compendium of the fifty Books of his *Pandects*) it is thus said, *Imperatoriam majestatem non solum armis decoratam sed etiam legibus opus esse armatam: ut utrumque tempus & bellorum & pacis recte possit gubernari*; This Text of the Civill Law is admitted by Chief Justice *Fortescue*, to belong by the common Law to the Crown of *England*, and therefore as to the first part concerning the *Militia*, I will first prove it by ancient and sound authourities in Law.

2. By many Acts of Parliament. And
3. I will give the Reasons of the Law in both, and so conclude this fifth Proposition, reserving the latter part concerning the Laws in the sixth and last Conclusion.

Chief Justice *Glanville* in his learned Book of Law, Written in the time of *Hen. 2.* hath these words, *Regiam Majestatem non solum armis contra*

De Laud. Leg.
Aug. cap. 1.
fol. 4.

Glanvil in Prolego.

G 4 *rebelles*

Reg. Ma. in
Pras.

rebelles & gentes sibi regnoque insur-
gentes oportet esse decoratam : sed &
legibus ad subditos & populos pacifi-
cè regendos decet esse ornatam.

Regia Majestas, A learned Treas-
tise of Law Written at the same time
thus saith; *Regi duo sunt necessaria,*
Arma quibus hostes debellet, leges
quibus subditos pacificè regat.

Lib. 1. in
Princip.

Bracton, A learned Judge of the
Land, in the dayes of Hen. 3. thus
Writeth; *In Rege qui rectè regit ne-*
cessaria sunt duo hac, viz. Arma &
Leges; quibus utrumque tempus bel-
lorum, & pacis rectè possit guber-
nari.

Cat.br.fol.113.

The *Natura brevium*, A Book of
high esteem in our Law, layeth down
this for a Ground, *Es est à entendre*
que le roy, doit de droit sauver & de-
fender son Reaume vers la mere comme
vers enemyes, q' il ne soit surround,
ou degaste & de provider remedy par
ceo. It is to be understood, (saith
that Book) that the King ought of
Right to save and defend his Realm,
as well against the Sea, as against ene-
mies, that it be not surrounded and
spoiled

Cook. 2. Rep.

The Rights of the Crown.

89

spoiled, and to provide remedy for it.

It is likewise resolved for Law in *Wisemens* case, that to give Land to the King in consideration that he is head of the Commonwealth, preserveth his people in Peace, and repelleth the enemies of it, is no consideration in Law to raise a use; because the King by his Office ought to do all this. And the reason of all these Authorities is upon this ground. The Law which trusteth the King with the end, *viz.* the preservation of his people in Warre and Peace, trusteth him with the means to do it, *viz.* Armes and Laws. Many more Authorities might be cited, which for brevity I omit, and come in the second place to the Acts of Parliament.

And the first and most ancient is that Law of King *Canutus*, which was before the Conquest; *Qui pensionem ad oppida pontesve rescindendos denegabit. Militiamve subrefugerit, dabit Regi si Anglus fuerit 26 solidos*; where it appears, that the Subject was bound as well to contribute

Inter leges Canutici. 10.

Cook 2 Instit. fol. 701.

Lamb. 135.

Cook. 1. Instit. fol. 75.

The Rights of the Crown.

tribute to the Kings *Militia* (for that is the word there used) as he was to contribute to the repair of high-ways and Bridges; which strongly inferres, That the King hath as much Soverign Power over the *Militia* of the Kingdome, as he hath over high-ways and Bridges.

Amongst the Laws of King Edward the Confessour, it is thus provided in these words: *Debent enim universi liberi homines secundum feudum suum & secundum tenementa sua arma habere, & illa semper prompta conservare ad tuitionem Regni & servitium Dominorum suorum juxta preceptum Domini Regis explendum & peragendum.*

And William the Conquerour confirmed that Law in these words: *Statuimus & firmiter precipimus, ut omnes comites, & Barones, & Milites, & servientes, & universi liberi homines totius regni nostri predicti habeant & teneant se semper in armis, & in equis ut decet & oportet, & quod sint semper prompti & parati ad servitium suum integrum explendum*

plendum & peragendum cum semper
 opus adfuerit secundum quod nobis
 debent de feudis & tenementis suis
 de jure facere, &c. By both which
 Laws it plainly appears ; That all
 Earls, Barons, Knights, and Free-
 men of *England*, (and such were all
 those that were not villains, Sock-
 men, or Copy-holders) were to be
 in armes upon the Command of the
 King, and defence of his Kingdom
 (for so he calls it, because King and
 Kingdom are Relatives, and that man
 that loves not the one loves not the
 other, let his pretence be what it will)
 And not only such Freemen that held
 their Lands by bearing arms, but all
 others, as the exigence of the King-
 dom should require, which appears
 in this, That the King before the
 Statute of *Quia Emptores terrarum*
 in 18. E. 1. might create tenures by
 bearing of Arms ; nay more, by
 creating the greatest Officers of Arms
 in the Kingdom, as to be Marshal of
 the Kings Host, to be high Constable
 of *England*, and Earl Marshall of
England, &c. By which means it
 grew

Litt. l. 2. c. 8.
 Cook. Instit.
 fol. 75.

The Rights of the Crown.

grew to be a usage and custom in the Crown of *England*, to have the sole command of the *Militia* in the Kingdom, as appears plainly by the Statute of 7. Ed. 1. where it was agreed by the *Prelates*, *Earls*, and *Barons*, and *Commonalty* of that Parliament held at *Westminster*.

That it was the Kings right, and belonged to him of his Royal Seigniorie, to defend all force of Armour, and all other Force against the Peace, at all times when it shall please him, and to punish them which shall do the contrary according to the Laws and usages of the Realme; And herewith the people are bound to aid the King as their Sovereign Lord at all seasons, when need should be.

And the same King *Edward* the first, to shew his chief Power and Command in this matter of the *Militia*, given to him by the ancient Laws and Statutes of this Realm, about six years after, viz. in the 13. year of his Reign, doth by the Statute of *Winchester* provide in this manner, That every man shall have

Harnes

Harnes in his house to keep the Peace according to the ancient assesse. That ancient assesse is thus explained, that is to say, Every man from fisteene years old to fourty, shall be assessed and sworne to armour according to their quantity of Lands and Goods, to wit, from fifteen pound Lands, and fourty marks goods a Halbert, a Brest-plate of iron, a sword, a knife, and a horse: and from ten pound Lands, and twenty marks Goods, a Halbert, a Brest-plate of Iron, a sword and a knife: and from fourty shillings Land to an hundred shillings of Land, a Sword, a Bowe and arrows, and a knife, &c. And so downward, as appears more at large in that Statute: Wherein it is likewise provided, that two Constables in all hundreds should be chosen (now called high Constables) for this purpose, that twice every year they should take view of the Armour, and present to the Justices such defaults about Armour, as they should see in the Countrey.

Stat. de Winchester, 13^o E.
I. cap. 6.

It is true, that at the Parliament of 4^o & 5^o. Phil.
4. 5. Phil.
& Mar. cap. 2.

45. *Phil.* and *Mar.* this Statute was repealed, not as to the power of imposing Arms, but as to the Quantity and proportion of Arms, (the manner of Arms being at that time changed, and the value of Lands increased, whereby a greater proportion was assessed) this may appear by the third Chapter of that Parliament, where the power of mustering of men, and levying a number of them for the Kings service in his warres, is placed wholly in the Crown. And therefore that Statute of Repeal is warily penned, for it is not a repeal of the common Law concerning Arms, but of such Statutes only as concern the keeping and finding of Horse, horses, or Armour: which Statute of Repeal was afterward repealed by King *James*, so that it necessarily followeth, that either the Statute of *Winchester* is still in force, and standeth for Law, or else if it be repealed, the common Law of *England* concerning finding of Arms, is in force at this day. Many more Statutes there are concerning

ing this Royal Prerogative of the *Militia* in the times of the succeeding Kings between *Ed. 1.* and *Q. Mar.* especially in the days of *E. 3.* a martial Prince, and a great Souldier, which for the great number of them I shall omit, and come in the last place to consider the reasons of the Law in thus placing the chief power of the *Militia* in the Crown.

And the first Reason is taken from the Office and Duty of a King, mentioned by *Plowden* in the case of the Information for Mines; where it is said, *That the King is the Head of the Commonwealth, and the Subjects are his Members, and the Kings Office to which he is appointed by Law, consisteth in two things; to wit, in Armour to defend them against all hostility, and in good Laws.* And therefore it is that *Lipsius* makes military Prudence a necessary requisite for a Prince for the defence of his own Person, his Crown and people, which would not be so necessary, if the power of the Sword did not properly and peculiarly belong unto him. And therefore thus is laid down

Plow. Com. fel.
315. b.

50. lib. Pol. c. 2.

down by him, *Tolosanus*, *Bodine*, and *Bozerus* (famous and learned Politicians) as a maxim most essential to royal Majesty, *Solius est Principis bellum suscipere, decernere, indicare, & administrare*. It is only proper to a Prince to denounce Warre, to undertake it, to order and determine it, which they largely prove. I shall only but quote the places in the Margin. And agreeable to this is the Law of *England*; No Subject saith Sir *Edw. Cook* (an Authour of an approved Authority) no Parliament can levy Warre within the Realm without Authority from the King, for to him, saith he, it only belongeth. And therefore he puts these cases, That if Subjects (in the Plural number) shall levy Warre to expulse strangers, to deliver men out of prisons, to remove Counsellours, or against any Statute, or to any other end, pretending Reformation of their own heads, without warrant, they are (his own words) saith he, a levying of Warre against the King. And hereupon it was resolved

Tolos. l. 9. c. 1.

Eod. l. 1. c. 10.

Bozer. de Jur.

Belli c. 4.

Lipsius l. 5. c. 4.

Cook. 3. Instit.

fol. 9.

ved for Law in the dayes of King Edward the 4th, That if the King of England do make a league with the King of Denmark, and all the Subjects of England will make War against those of Denmark, if the King of England assent not to it; It shall not be accounted a Warre. For none in England can raise Warre, but by Authority from the King, as was said before.

The second Reason is drawn from the Office and Duty of Subjects, which is to be obedient to Authority, and to fear and honour their Princes. It is the speech of God from the Law of Nature, *If I be a Father, where is my honour? and if I be a Master, where is my fear?* Kings are both, and therefore honour and fear do naturally belong to them. And can the King have either; if the Sword should not be in his hand? It is the very argument of the Apostle, to perswade Subjects to be afraid of committing evil, because the King beareth not the Sword in vain, but is Gods minister,

19.E.4.fol.6.b.

Mal.1.6.

Rom.13.4.

H

to

The Rights of the Crown.

to execute wrath upon him that doth evil. A King without a Sword is like a Father without a rod, the child incorrigible, the Subject rebellious. The true duty of Obedience to a Prince, is a sweet mixture of fear and love; they are loved for their mercy, they are feared for their Justice, of which the Sword is the proper Ensign.

Smite the Shepherd, and the sheep will be scattered. Kings are smitten, when they are deprived of their Swords; and we have seen the sad experience of it with our eyes. Since our Shepherd hath lost his Sword, what a scattering there hath been of all his people, of all sorts, of all Countreys, of all Cities, Towns and Families, breach upon breach, worse than that scattering in *Israel*, when there was no King. And which will never be happily pieced again, till the people be reduced to their obedience, and the King restored to his honour.

Fire we know, when it is held from ascending to its proper Element,

ment, by the obstinacy of a thick Cloud; how it rends the Heavens in pieces by horrible thundering and roaring: Such is military power withheld by the Subject from the Crown, till it return thither again, it causeth the pillars of a Kingdom to shake and tremble: It turns Law into Lust, Justice into Oppression, Kindness into Cruelty, Liberty into Slavery, and a well composed Commonwealth into a rude disorderly Camp.

My third and last reason is taken from the constitution of the Commonwealth.

The world (of which all orderly Republicks, are but so many hand-some pieces) is named in Greek *κόσμος*, signifying Order and Ornament; the obedience of Heaven and Earth to that Law of Nature God hath set them in the stay of the whole world, and makes it at this day so lovely and beautifull: For should the Sunne and Moone wander from their beaten wayes (as a Reverend Divine elegantly ex-

preſſeth it) the times and ſeaſons of
 the year blend themſelves by a diſor-
 derly and confuſed mixture the winds
 breath out their laſt gaspe, the Clouds
 yeeld no rain, the earth be defeated
 of heavenly influence, the fruits of
 the Earth pine away as Children at
 the withered Breſts of their Mothers;
 what would become of man, when
 theſe things now do all ſerve? The
 like I ſay in a Commonwealth. If
 Kings ſhould yield up their Crowns
 unto their Subjects, whereby Ser-
 vants ſhould ride on Horſeback,
 and Princes walk like Servants on
 the ground, which muſt needs ſo
 come to paſſe, if the Chivalry
 ſhould be in the people, what con-
 fuſion and deformity ſhould we
 then behold in the Common-
 wealth? It would be as mon-
 ſtrous and ugly a ſight in that
 Politique Body, as in the Body
 Naturall; To ſee the Head be-
 come the Foot, and the Foot
 the Head, from whence Anarchy and
 Deſolation muſt needs follow, when
 the King by this means ſhall be-
 come

come the only Subject in the Land.

Many more reasons may be added, but these shall suffice, and shall in the next place handle the second weapon of the Crown, by which the People of the Realme is governed in the time of Peace, viz. The Lawes of the Land, by discussing the sixth and last conclusion, which is this.

That this Kingly Government be according to the Law of the Land, not by the Laws of lust, but by the Laws of the Land; by legal, not by arbitrary power; and this makes the King of *England* the greatest and most compleat Monarch in the world. That the Crown of *England* is incorporated, and interwoven with the Laws of the Land. For it is the grosse ignorance of those men, that make Monarchy to consist in Exemption from Laws; such a Monarchy is rather to be called Dissolute, than Absolute; Impotent, than Powerfull;

Bracton l.2.c.9

Fortes. de laud.
leg. Ang. c.37.

Tyrannical, than Regal. I have many learned Authours to warrant this; I will only instance in three. *Rex* (saith Bracton) *dicatur à bene regendo, non à regnando; quia Rex est dum bene gerit, Tyrannus autem dum Populum sibi concedit violenta opprimat Dominatione*, saith Sir Jo. Fortescue. Ch. Just. of Engl.

Quis enim (Rex) potentior liberiorve esse potest quam qui non solum alios, sed & seipsum sufficit debellare; quod potest, & semper facit Rex politice regens populum suum?

But above all is the Testimony of King James, as great a Prince in Learning, as in Power; A King saith he, governing in a settled Kingdome, leaves off to be a King, and degenerates into a Tyrant, as soone as he leaves off to rule according to his Lawes. Therefore Kings that are not Tyrants, perjured, will be glad to bound themselves within the limits of the Lawes, and they that perswade them

them the contrary, are vipers and
Pests both against them, and the
Commonwealth. And afterward de-
claring to the Lords and Commons
his opinion of the Common Laws
by which his Realme was governed
he thus speaketh, *First as a King*
I have least cause of any man to dis-
like the Common Law. For no Laws
can be more advantageous for a King,
and extendeth further his Præroga-
tive than it doth. And for a King
of England to despise the Common
Law, it is to neglect his own
Crowne.

And how apt and convenient a Law
it is for the people as well as for the
Crown, he expresseth it in another
speech to the Parliament, *I must*
needs confesse, and I think I am a-
ble to prove it, that the grounds of
the Common Law of England are
the best of any Law in the world,
either civill or municipall, and the
fittest for this people. Upon all which
it plainly appears, as I said before,
that a King of England governing ac-
cording to his Laws, is the most abso-

Chap. 35, 36,
37.

lute and free Monarch of the world;
For this is true freedome in a Prince,
to be loved at home; and feared a-
broad, to be able to defend his own
people at home from oppression and
violence by his Laws, without the help
of an Army; to keep and conserve all
his Subjects in happy peace, by a sword
made of Parchment and Paper in his
Laws, and not by a Sword made up
of Iron and Steel in his Armies. This
is excellently and at large declared by
the same *St. John Fortescue*, in his book
of the praise of the Laws of *England*,
where in three severall Chapters he
sets down the differences betwixt the
English Governement by the Laws,
and the other Governement by Ar-
bitrary power (misnamed Regall Pow-
er) and there makes the Comparison
betwixt the Governement of *Eng-
land*, and that of *France*; That they
are poor Peasants; we a rich people;
They are so pilled and polled with
Taxes and Impositions. (especially that
of Salt) that they are not able to sup-
ply their King, if he should need their
succour, we are able to succour him

in

in Warre, and to relieve him in want;
 No Souldiers (in time of peace) can
 come by Law into our Houses, spoile
 our Goodes, and eat us out with Free-
 Quarter as they do there; Nor are
 we privily executed by Martiall Law,
 without open and ordinary Justice
 as they are, with many more grie-
 vances which he there relateth at
 large, and unto which I referre my
 Reader. So that no Nation under
 Heaven is more happy under Kingly
 Governement, than we are here in
 England, were we a thankfull people,
 or rightly prized our own happinesse.
 For the Crown of *England* is so encir-
 cled with good Laws, that it is scarce
 possible for a King of *England* to fall
 into Tyranny, for he neither speak-
 eth, nor acteth, nor judgeth, nor ex-
 executeth, but by his Writt, by his
 Laws, by his Judges, and Ministers,
 and both these sworne to him to judge
 aright, and to execute justice to his
 People. For the King doth nothing
 in his own Person. If he sit in judge-
 ment as he may do in any of his
 Courts, as King *Richard 2.* King
Edward

8. Hen. 4. 19.
 8. Hen. 6. 20.
 2. Rich. 3. 11.

Fortes. de
 de Land Leg.
 cap. 8.

The Rights of the Crown.

Edward 4. and *King Henry 8.* did in the Kings-Bench, *King Henry 7.* and *King James* in the Starre-Chamber, yet he pronounceth ~~his~~ judgement himself upon his People, but it is left by him to the proper Judges of that Court under him; which is the reason why it is said in our Law, that *the King can do no wrong*; for if the Subject here in *England* be wronged, it is by some Judge, Officer, or Minister, &c. under the King which hath wronged him, and for which the Subject may have his proper remedy in Law, in which justice cannot be denied him, or delayed by the Judges, who are required by their duty and Oath, not to stay or stop Justice, either for the Great Seale or Little Seale, which are the highest Commands of the King. The words of the Statute are more Emphaticall, *Item, It is Accorded and Established, that it shall not be commanded by the Great Seale, nor the Little Seale, to disturbe or delay Common Right; And though such commandment do come, the Justice there*

9. Hen. 3. c. 29.

5. Edw. 3. c. 9.

2. Edw. 3. c. 8.

18. Edw. 3.
Oath of the
Justice.

therefore shall not leave to do right in any point.

But above all the Statute of 20. Edward 3. is remarkeable, which hath these words, *We Command all Our Justices that they shall from henceforth do equall Law and Execution of Right to all Our Subjects rich and poor, without having regard to any person, and without omitting to do Right for any Letters or Commandment, which may come to them from us, or from any other, or by any other Cause.* Let the Judges do right, and the Kings of England, as they can do no wrong; so are not they willing to do it, as may appear in the examples of King James and the King that now is. Then I was a Reporter in the Common-Pleas about 120 Jac. There happened in that Court a Suit in a *Quare Impedit*, Between Sr Edward Pincheon, and one Harris the Kings Incumbent, which Suit after a long and tedious delay in Chancery, came at last to receive a Judgement, in the Court of Common-Pleas; At the day appointed

The Rights of the Crown.

pointed for giving of Judgement, The Lord *Hubert* Chief Justice of that Court, produced a Letter out of his Pocket from King *James*, for deferring Judgement, which he shewed to the rest of the Judges of that Court, *Warborton, Winch, and Nicolls*, desiring their Advice what to do: Justice *Nicolls* Puisne Judge of the Court, and first to Argue, spake openly in this manner; *My Lord, This Cause hath had many delaies, It is our duty to do equal right to all his Majesties Subjects, and that we ought not to delay Justice, neither for the Great Seal, nor the Little, and much lesse for a Letter; And therefore for my part I will go on and proceed to Judgement,* which he then gave for *Sr. Edward Pincheon*, and the rest of the Judges followed according to their turns and did the like. How this wrought with King *James* the Consequence will shew. For about a year after, when Officers were to be chosen for the Prince his Sonne, the King that now is, then newly made Prince of

of Wales, The Highest Office being the Office of Chancellour, had diverse great Competitors, the Lord Hubert, and Sr. Francis Bacon then Atturney Generall and some others. The King rejected them all, and of himselfe chose Justice Nicholls, that neither sought it, or thought of it, sixty miles off at his house in the Countrey, being in the long Vacation; and I was sent for from the Temple to convey his Patent to him into the Countrey, which I did accordingly, and about a Moneth after, going up at Michaelmas Terme, he was presented to the King, who scarce ever saw him before. The King told him, *That he took notice of him for an honest and a just Judge, and one that would take no Bribes, and therefore had made choice of him to serve his Sonne in his Highest Office, &c.*

The like I have heard of his Majesty that now is, by another Judge a Successor of his in the same Court of Common Pleas, who did Execution of Justice notwithstanding the Kings

The Rights of the Crown.

Kings Letter, whereupon he was sent for to the King, who grew angry with him for doing contrary to his Letter; The Judge acquainted him with that high command that was laid upon him by the Statute of 2^o Edward 3, to do equal Law and Execution of Right to all his Majesties Subjects, and by his Oath to the King to performe it, telling his Majesty, *That his Throne was established by executing Justice, and much Honour redounded to him thereby*, and many other words delivered in better Language than I am able to expresse, whereupon the Kings heart began to melt, telling the Judge he was well pleased with him, and bade him go on in the wayes of Law and Justice, and he should have his favour in stead of his frowne. And heretupon I heard the Judge deliver this opinion of him. *That he thought he would make the justest Prince upon Earth, had he Ministers about him answerable to his goodnesse.* Thus are good Kings sooner brought to see their Errours in the

the quiet and still wayes of Justice grounded upon the sincerity of impartiall Laws, than by the Councils of publique Persons, when they are prosecuted in a violent way. And such a naturall Inclination to the love of Justice doth possesse the spirits of Princes, that they seldome miscarry in their duties, did not their Ministers under them, whom they entrust with their Laws, first fayle in theirs. And therefore I do affirme and maintaine, that since the bloody contentions about *Magna Charta*, which were begun and continued in the Raignes of King *John* and *Henry 3*, and happily quieted by King *Edward 1*, who redeemed his Captive Father out of Prison, vanquished the rebellious Barons, and confirmed the great Charter, the Oppressions of the People of *England*, have been chiefly caused by their fellow Subjects, not by their Princes. And therefore the Armes taken up against them for that cause were utterly groundless and unlawfull, as were the Arms taken up against those

those lawfull, but very unfortunate Princes *Edward the 2.* and *Richard 2.* which brought on their Deposition, and Murther afterwards (the most traiterous and bloody acts that ever were committed by *Englishmen* against their Soverign) none of which acts do the known and established Laws of *England* allow, in Subjects against their own lawfull Soveraigns.

A short touch of which Laws joyned with an expression of the form of their Oaths, taken at their Coronation, (not commonly known, and less understood by the People) will in the next place handle, and end this my sixth and last Conclusion. The whole frame and Body of the Common Law of *England*, is aptly divided into these two parts:

1. *Fus Regium*
2. *Fus Populi*

1. The Law which concerns the King, being an essential part of the Common

Common Law, the Subject of *England* is bound by his Allegiance and Oath to observe and keep, as strictly and exactly, as that Law which concerns himself, which every religious and conscientious Subject will readily do. For I do not find in all the Book of God a more certain mark of an irreligious man, than a despiser of the just Government and commands of his Sovereign.

2. The Law which concerns the People being another essential part of the Common Law, the King of *England* is tied by his Oath at his Coronation, as much to maintain, defend and keep, as he is the Rights of his Crown. So that the Law makes a Marriage between these two Rights, as well in respect of the Prince, as of the People.

The *Fus Regium* 1. *Fus Maje-*
belonging to the } *statis*.
King is divided } 2. *Fus Præro-*
into } *gativa*.

Fus Majestatis is that which belongs to him as King, common to
I him,

The Rights of the Crown.

him, with other Princes, by the Law of Nature and Nations; as for example, to have the Supream Power in making Laws, the chief command of the *Militia*, by which he bestows the Degrees of Knighthood, the coyning of Money, the giving of Honour, the pardoning of Offences, the sole making and disposing of the Great Seale, the dispensing with penall Lawes, the making of Judges and Officers, with divers more.

The *Jus Prærogative*, is that which belongs to him as King of *England*, and given to him by the Law alone, which is very large, and of which the Statute *De Prærogativa Regis* made 17^o E. 2. is but a piece.

The *Jus Populi* is that, which by the same Common Law belongs to the People, divided into two parts, by Clergy and Laity; the one called *Jus Ecclesiæ*, the other called *Jus Regni*, and so distinguished in the Parliament Writ. These two Rights of King and People make up the Body of the

the Common Law of *England*, chiefly
consisting in Customes, Liberties,
Priviledges and Immunities belonging
to Prince and People, and by them
approved of, as good and profitable
to both, by an immemorial prescrip-
tion, which maketh the best Law
of all, as most fixed and immutable.
For other Laws which are not so
tried by long tract of time, are much
subject to change and fluctuation,
which is the reason why the Laws
of *England* have at this day the ho-
nour above others, in that they
consist upon such ancient and unsha-
ken Principles. But this is a great
misery which hath befallen this King-
dom, and which we feel at this day,
that the People of *England* have
been very industrious, to know their
own Rights, but are very ignorant
in the Rights of the Crown. Though
by their Oath set down in the Sta-
tute of 1. *Elizab.* they are bound
to know them in what they swear,
*That they shall to their Power assist
and defend all Priviledges, Prehemi-
nencies and Authorities granted, or*

belonging to the Kings Highnesse, his Heirs and Successours, or united and annexed to the Imperial Crowne of this Realme. The ignorance whereof, hath, I fear, to the crying sinne of this Land, added the Ludd crime of Perjury and Rebellion. And herein those of our own Profession are not without blame, in that they find many Tracts of Law, touching the full Rights of the People; but not one compleat Treatise of the whole Prerogative of the King. One Judge *Stanford* hath learnedly written upon the Statute of *Prærogativa Regis*, made and enacted 17th *Edward 2.* consisting chiefly in Wardships and Tenures; but what is that to the large Prerogative of the King, extending to other things? Had that been well done, things had not been so ill done at this day.

The Lawes of England, as well those which concern the Kings Prerogative, as those that concern the People, are both of them so united to the Crown, that the one cannot

without the other : insomuch as the safety of the one , is the safety of the other ; and the hurt of the one , is the hurt of the other : of which many instances might be given, and some of them not written in Ink, but in Blood ; whereby a man would think it impossible for a King of England to govern otherwise, than by his Laws. And therefore for preventing that possibility, and all jealousies and feares touching the same, the King takes a solemne Oath at his Coronation to maintain them all, which I will set down *verbatim*, as it is to be found in an old *Assize* or Judgment of the Statutes of *H. 8.* in these words,

That he shall keep and maintaine *Oath.*
the Rights and Liberties of the
holy Church , of old time granted by
the righteous Christian Kings of Eng-
land : And that he shall keep all the
Lands , Honours and Dignities right-
eous and free of the Crowne of
England, in all manner whole, with-
out any manner of minishment. And

The Rights of the Crowne.

the Rights of the Crowne, hurt, decayed, and lost, to his power shall call againe into the ancient Estate: And that he shall keep the Peace of the Holy Church, and of the Clergie, and of the People with good accord. And that he shall do in all his Judgements, Equity and Right, Justice with Discretion and Mercy. And that he shall grant to hold the Lawes and Customes of the Realme, and to his power keepe and affirme them, which the Folke and People have made and chosen: And the evil Lawes and Customes wholly to put out: And stedfast and stable Peace to the People of this Realme keepe, and cause to be kept to his power. And that he shall grant no Charter, but where he may doe it by his Oath.

In which these things are shortly observable,

1. That the King ought by his Oath, under the pain of Perjury, to maintain the Rights of his Crowne, as well in time of Warre by his Sword,

as in time of Peace by his Lawes,
without any manner of diminution:
And this belongs to him to do so, as
an essential part of his Office, men-
tioned in the Laws of St Edward, in
these words, *Rex quia Vicarius sum-*
mi Regis esse, debet de jure omnes
terras, & honores omnes, dignitates
Jura, & Libertates Corona Regni hu-
jus in integrum cum omni integritate,
& sine diminutione observare, & defen-
dere, &c.

Leg. Edw. cap.
17. de offic. Re-
gis.

2. That if the Rights of the
Crowne be hurt, decayed or lost,
the King is bound as well in duty
as by his Oath, to the uttermost
of his Power to endeavour the re-
stitution of them to their ancient
estate; And this is to be done, as
well for the safety and benefit of
his people, as for his own honour
and dignity, as may appear by the
Petition of the Lords and Com-
mons in the Parliament of 14^o Rich. 2.
in whose Raigne the Crown suffer-
ed much losse and dammage; where
they desire, *That the Prerogative of*
the King and of his Crowne may be

Rot. Parl. 14.
R. 2. n. 15.

The Rights of the Crown.

kept, And that all things done attempted to the contrary might be redressed, and that the King be as free as any of his Progenitors were.

3. That the King is to keep and maintaine the Rights and Liberties of the Church and Clergy of *England*, consisting not only in their Functions and Jurisdctions, but in their Lands and Revenues.

4. That the Laws and Customes of the Realme, *which the people have made and chosen*, are to be understood only of those Laws and Customes then in being at the time of the taking of that Oath: For these Reasons;

1. The words are in the Preterperfect Tense, *which the people have made and chosen*, not in the Future Tense, which they were hereafter to make, and which the King could not swear to keep, till he knew what they were.

2. The words are chiefly meant of such Laws and Customes which lay in usage and immemoriall prescription,

tion, which have their essence and
date from time past; For no Cu-
stomes can begin by Law in time to
come.

3. They were such Laws and Cu-
stomes which the King at the time of
the taking of this Oath had a Legall
power to judge of and determine,
whether those Laws were good or
bad; for the evill Laws and Customes
he was wholly to put out, which must
of necessity be referred to the time
past or present: for of future things
he could possibly have no knowledge;
Where also by like necessary conse-
quence it follows, that the King hath
a Supream Vote in all Laws whatso-
ever, to judge whether they be good
or evill, for his Crown, his Church
and Kingdome, and accordingly to as-
sent or disassent, or else it will be im-
possible for him to avoid the Crime of
Perjury.

5. The King shall grant no Char-
ter but where he may do it by his
Oath; Now the Charter there meant,
is the Charter of Pardon, granted by
the King in the Cases of Manslaugh-
ter,

6. E. 1. Stat.
de Glouc. c. 9.

2. E. 3. Stat.
de Northton.

c. 2. 4. E. 3.

c. 13. 10. E.

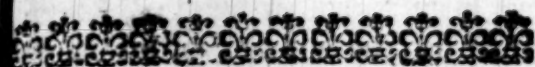
3. c. 2. 14.

E. 3. c. 15.

ter, Robberies, Felonies, and other trespasses against the Peace; And what in these Cases shall be done according to the Kings Oath, and what not, is resolved and determined by divers Acts of Parliament, which I have Quoted in the Margin.

So that by all I have said it plainly appears, that the King in respect of his Duty and Office, in respect of his Oath, in respect of the Dignity and Honour of his Crown, and the good of his People, is to Govern them by the Laws of the Land. And so have I made good my sixt and last Conclusion.

THE



THE
CONCLUSION
TO THE
READER.

Courteous Reader,



Or so I hope I shall find you in pardoning any error or mistake which may happen in this Discourse against my will; when I shall acquaint you that it was Penned in the time of my Imprisonment, and my Chamber, Study, and Books in the middle Temple Sequestred from me.

In that very time when the greatest Monarch of all *Europe*, even the King of Great * Britane was become a Prisoner, Great by Extraction of Birth, being legally and successively descended

*Azor. Tom. 2. l.
11. c. 5. Col.
1668.*

ded from above an hundred Kings; Great in the abilities of his mind, but Greatest of all in Piety, Patience, Wisdome, Fortitude, and other lovely Graces and Virtues, &c. In the loss of whose Liberties I evidently saw the loss of the Peoples: for the which, I had not long before suffered by defending their Liberties against the Usurpations of the High-Commission.

I hereupon thought it incumbent upon my soul to defend the Rights of the *Crown of England*, the huge supporter of the *Peoples Liberties*, unto which, I held my self bound in *Duty* and *Conscience* by a double Caution; First to my Prince by my Oaths of *Supremacy* and *Allegeance*, which I had taken five times; part of which are *to assist and defend all Jurisdictions, Prebeminencies and Authourities annexed to the Imperiall Crowne of this Realme.*

Next to my Borough of *Southwarke*, where I was freely chosen their Burgesse for that Parliament, and maintaining theirs and the whole Peoples

ples Liberties annexed to that Imperial Crowne; part of which Jurisdiction is to maintaine their Rights. Of which, that blessed Prince gave a signall testimony, by professing at the time of his death, *That he died a Martyr for the Liberties of his People.*

After whose death; I saw with grief, what I ever feared would come to pass with Horrour; Liberty, Truth, and Peace, so much cried up and contended for, quickly turned into Licentiousness, Lies and War: their Liberties confirmed to them by above thirty Parliaments, and holden for divers hundreds of years by the Great Charter, they at that time held them by no other Tenure, than the *sharper Sword*, and the stronger Arme.

Me thinks good Reader I still heare in my eares the wofull cry of the People of *England* at that time, much like that in the Lamentations of *Jeremy*, *The Crowne is fallen from our Head, the breath of our Nostrils is gone: woe unto us that we have sinned.* And this we long continued amongst us, and had done so still, had not God who

who giveth salvation to Kings; and by a miracle of Mercy sent us a Deliverer our now gracious Sovereigne, whose like another *David*, he had often saved from the hand of *Saul*, and from his hurtfull Sword. And therefore you, and I, and all the people of *England*, as we have wonderfull cause to praise God for him; so have we cause mightily to pray for him. That Almighty God who hath appeared to him like to another *Moses*, as well in the *Flage* as in the *Bush*, and delivered his soul from death, & his feet from falling, would bless him with such a spirit of Government, that Judgment may run down as *Waters*, and Righteousness as a mighty streame in all the parts of his Dominions. And likewise would bless all his People with such a spirit of Obedience, That they may beate their *Swords* into *Plowshares*, and their *Spears* into *Pruning-hooks*; and that they may not learne War any more. But that instead of the deformity of War, the Beauties of Grace and Glory may ever dwell in our Land.

Isai. 2. 4.

F I N I S.

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